DOCUMENT RESUME

ED 344 598 IR 054 001

TITLE AIME Copyright Information Packet. Revised.
INSTITUTION Association for Information Media and Equipment, Elkader, IA.
PUB DATE Dec 91
NOTE 125p.
AVAILABLE FROM AIME--Association for Information Media and Equipment, PO Box 865, Elkader, IA 52043 ($7.50 postpaid).
PUB TYPE Guides - Non-Classroom Use (055) -- Legal/Legislative/Regulatory Materials (090) -- Viewpoints (Opinion/Position Papers, Essays, etc.) (120)

EDRS PRICE MF01/PC05 Plus Postage.
DESCRIPTORS Broadcast Industry; *Copyrights; Elementary Secondary Education; *Fair Use (Copyrights); Films; Higher Education; Intellectual Property; Learning Resources Centers; *Legal Responsibility; Mass Media Use; *Policy Formation; Programing (Broadcast); Public Libraries; Reprography

ABSTRACT

Designed to assist educators in developing or revising school/library copyright policy, this packet provides the following materials: (1) a viewer's guide for the film "Copyright Law: What Every School, College, and Public Library Should Know"; (2) a statement of the primary missions of the Association for Information Media and Equipment (AIME); (3) suggestions for the development of a school copyright policy; (4) special AIME reports (i.e., "Frequently Asked Copyright Questions," "Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes," "Archival Copying and the Law," and "Considering Copyright...The Nursing Home Exemption"); (5) additional sources for copyright information; (6) the addresses of television and cable networks to be used for requesting permission for off-air taping; (7) profiles of recent copyright violation cases; (8) an AIME press release detailing its pursuit of copyright violations; (9) news clippings of copyright violations articles; (10) two additional AIME reports ("AIME Settles Copyright Infringement Case," and "The BOCES Litigation"); (11) Heartland Educational Agency 11 (Johnston, Iowa) Media Center's copyright guidelines, "Copyright Condensed;" (12) the Los Angeles Unified School District's videotape and film use guidelines; and (13) the copyright policies of three school districts. (MAB)

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AIME Copyright Information Packet

Association for Information Media & Equipment (AIME)
Elkader, IA

January 1990 - released

December 1991 - revised

IR054001

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FROM: Allen M. Dohra,
Chairman, AIME Copyright Committee

RE: Copyright Information Packet

The enclosed materials will assist you in developing or revising the policy at your school or library and will help you understand what is legal and what is not under the copyright law. You may duplicate these materials at your discretion for use within your school, library or agency. If you make a copy(s) of any sample policy enclosed, please be sure to give credit to the school who wrote it.

AIME takes the position that a copyright policy is important for an educational entity to develop. It helps to avoid confusion on the part of staff and administrators and takes a definitive position on the importance of knowing the law and obeying it. A copyright policy also has the potential to insolate the agency or institution and administrators from liability if an infringement action were to be instituted because of activities by individuals contrary to the policy and against the law.

AIME, by distributing these policies, makes absolutely no representation as to the contents of any of the policies concerning accuracy or legality. In addition, AIME has randomly selected these policies and by distributing them is not directly or indirectly endorsing either the policy or the agency responsible for the preparation of any of them.

AIME produced the film/video program "Copyright Law: What Every School, College and Public Library Should Know" to help educators and administrators understand what is and what is not allowed under the copyright law. An order form for the film or video is enclosed.

Please use the Copyright Hot Line if you have a question regarding film/video and the copyright law or if you suspect that a copyright violation has occurred. AIME will be glad to answer your questions and take appropriate action on any suspected copyright violation.

A VIEWER'S GUIDE TO
COPYRIGHT LAW:
WHAT EVERY SCHOOL, COLLEGE AND PUBLIC LIBRARY SHOULD KNOW

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Permission is hereby granted to copy or reproduce this printed guide.

For more information or answers to questions about the copyright law, for assistance in developing effective copyright policy or for reporting copyright violations,
call the AIME COPYRIGHT HOT LINE
800-444-4203
or write to AIME, Association for Information Media and Equipment, PO Box 865, Elkader, Iowa 52043

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QUESTIONS AND ANSWERS

The following questions frequently arise during a session on copyright.

Q: If a school librarian is a certified teacher, does her presence in the library mean that a performance of a video in the library falls automatically within section 110(1)?

A: No. The librarian cannot be said to be teaching when principally performing the normal duties of librarian. Teaching within the meaning and intent of this section cannot be a passive matter.

Q: Can a school or library make a copy of a film or video for archival purposes when the program is no longer available?

A: No. Archival copying by a school or library of an audiovisual work, if done without permission, is illegal. Although the copyright law does permit some archival copying of print materials, audiovisual works are specifically excluded from this privilege. Even though a program may be unavailable, the copyright owner may have some plans for it in the future. In any event, the copyright owner during the term of copyright always retains the right to control duplication.

Q: Are the off-air taping guidelines applicable to public libraries?

A: Yes. Even though the guidelines do not specifically mention libraries, such was intended. However, all conditions of the guidelines must be satisfied, especially the requirement that the request for taping originate with a teacher. Libraries, like their school counterparts, will have to establish their own rules in order to regulate off-air taping.

Q: What are the penalties for copyright infringement?

A: The statutory damages range from $250.00 up to $10,000.00 per infringement. This means that a court can assess damages for each and every illegal act. In addition, the court may assess attorney fees of the plaintiff to the defendant if the court feels it is warranted. A plaintiff may elect to sue for actual damages in which case it must prove how much it lost in revenue as a result of the illegal acts of the defendant. As you might imagine, statutory damages would probably be preferred by a plaintiff in litigation against an educational institution.

Q: Can more than one off-air copy be made of a program under the guidelines?

A: In a system where more than one teacher requests that a copy be made, the answer is yes. Appropriate controls are essential in such cases in order to assure that all copies are accounted for and erased upon the expiration of the 45 day period unless a license is negotiated with the coyright owner. It may be easier to have teachers share a single copy if possible.

Q: What is the BOCES case?

A: In 1977 three educational film companies sued the Board of Cooperative Educational Services in Buffalo, N.Y. (BOCES) for illegally taping their copyrighted works off-air. The three plaintiffs were Encyclopaedia Britannica Educational Corp., Learning Corporation of America and Time-Life Films. Although the plaintiffs attempted to negotiate a license, the defendant refused. The allegations covered not only duplication off-air, but also additional instances of duplication which BOCES performed for individual schools served by it, as well as illegal public performances of the duplicated works in classrooms. The litigation drew national attention because it was the first time an educational authority had been sued over this set of facts. The final damages asessed against BOCES were around $75,000 in addition to its own attorney's fees of nearly $250,000. Although the off-air guidelines were not considered by the court, one must bear in mind that there were no guidelines at all until just prior to the final decision of the court which was released in 1982. However, the judge did not rule out the applicability of fair use in other cases.

Q: Is it fair use to copy a portion of a video program to put into a school video production which will not be sold?

A: If the requirements of fair use are satisfied, the answer would be yes. The fact that the school production will not be sold does make the fair use requirements easier to comply with, but that fact does not make it automatically a fair use. When in doubt, requesting permission is advisable.

Q: If permission is requested for any reason, and no response is received from the copyright owner or its agent, can an assumption be drawn that consent has been given?

A: No. Inferred consent is not a valid argument in your favor, and your only alternative is to continue to request the permission required.

Q: If a film or video program lacks a copyright notice, can you assume it is in the public domain and thus not protected by copyright?

A: The law does allow a copyright owner to correct the omission of the notice, if certain requirements are met. On the other hand, you may have one of the few copies which lack the notice. The law does not require you to research the records of the copyright office, and if you relied in good faith on the omission of the notice, you would most likely be considered an innocent infringer. A word of caution...If you are planning to make a major use of a program lacking a notice, such as transmitting it, your potential exposure must be measured against the cost of researching the records of the Copyright Office. Claiming to be an innocent infringer has its limitations.

Q: Why is there such a wide disparity between the price charged by home video distributors and educational distributors for the same program?

A: The answer to this question goes to the very heart of the basic differences between the two markets. The home video market is part of the mass market where the potential volume of business is vast and sometimes limitless. Although the owners

of mass market programs are in a position to charge a good deal of money to the distributor, the distributor can afford to sell or rent the program at a very reasonable price because of the economies of volume. When a typical program is released in the home video market, the distributor can realistically anticipate sales and rentals in the tens of thousands of units. On the other hand, the educational or non-theatrical marketplace made up principally of schools, colleges and libraries has a much smaller potential.

The educational distributor is faced with a much smaller potential market and thus must place a price on its products accordingly. The economies of volume are not as available to it. However, educational distributors include in their price the cost of full public performance rights, an additional benefit not available from home video stores.

Q: Are programs broadcast by public television and later made available to schools on prerecorded videocassettes covered by copyright, even though some public funds are used to provide the costs of production?

A: Most of the programs which are broadcast on public television are licensed to public television by the copyright owner who is often the producer. A typical program or series which appears on public television is underwritten by the private sector, very often a corporation or a number of organizations. Generally, the underwriter does not "own" the program and often it is owned by an individual public television station. The station then may assign distribution rights to a distributor which in turn will generate royalty income on behalf of the station. The station then uses this income to produce more programs and for other purposes which partially reduces its reliance upon individual donations or public funds. However, in some rare instances, public television may acquire such rights which enable it to grant schools, libraries and colleges the right to tape off-air without the payment of a license fee or to acquire a prerecorded videocassette directly from PBS. Conceptually, there should be no problem with protection under the copyright law in this instance.

Q: If a school or college installs a satellite dish to receive satellite transmissions, what kind of a license is required from copyright owners of the programs?

A: The answer to this question applies to any school system or library which utilizes a satellite dish to receive programming. The principle point is that a public performance license is required if the program is used in such a way as to constitute a public performance. This will be true even in those instances when no copy of the transmission is made. Although the Communication Act of 1984 made it possible for individuals to receive a satellite broadcast for private use, it did not exempt public performances. It should be noted that the 1984 act did not exempt private performances if the owner of the signal scrambles it and thus in such instances a license will be required.

The legal point being made here can also be extended to situations involving other locations where the use of a transmission involves a public performance.

Q: Under the off-air taping guidelines, can anything which you are capable of receiving on your television set be recorded?

A: No. The guidelines specifically limit themselves to "broadcast" programming which is defined as television programs transmitted by television stations for reception by the general public without charge. The only cablecasts which are allowed to be taped under the guidelines are simultaneous retransmissions. The premium channels and pay-per-view programming fall outside of the scope of the guidelines, and thus any taping you do with regard to such would be illegal unless specific permission is obtained in advance.

Q: Is there any limitation imposed by the guidelines in terms of where an off-air copy may be used?

A: Yes. Off-air recordings which are made under the authority of the guidelines are to be used only in classrooms and similar places devoted to instruction in the course of relevant teaching activities. This rules out extra-curricular activities or entertainment purposes. The guidelines also state that the use is to be restricted to a single building, cluster or campus. Beyond this, it is anticipated that teachers in other locations would initiate their own requests for an off-air copy.

DEVELOPING COPYRIGHT GUIDELINES

A recent trend in the educational community is the development of copyright guidelines by school districts and by individual institutions. This is occurring more frequently because most educational authorities want to avoid potential litigation. Most educators and librarians want to obey copyright laws as much as any other body of laws with which they must deal on a daily basis. Perhaps one of the things which distinguishes the copyright law from other laws is that the law itself is not easily understandable. Also, the opportunity for abuse exists on the part of everyone involved in the educational process, from the classroom teacher all the way up to the superintendent and governing board. An infringement will cause a copyright owner to bring suit against even those indirectly involved, including supervisors, administrators, and governing boards. On top of this, copyright infringement actions are expensive to defend and legal costs can easily run three to four times the amount of damages assessed by the court, as was the case in the Erie BOCES action. To avoid this, more and more school districts are attempting to write copyright policies for their own particular needs. Some of the policies may be more strict than the law requires, but in the final analysis, a policy becomes something which a particular system or institution desires for one reason or another.

This section will direct itself only to the essential features that become part of any copyright policy. It is not our intent to write a policy for you but rather to begin the thought process which may enable you to proceed.

Before beginning to develop the actual wording, you should obtain the approval of your governing authorities so that the policy you develop will have their total support and endorsement. They may well want to approve the final language, but you will want to meet with them from the beginning so that you are assured of their support throughout the development of your guidelines.

The next advisable step is to hold copyright meetings with your staff in order to determine their needs and also to determine how much they may or may not know about the subject. Bringing in outside experts is probably a good idea, especially for the purpose of exploring the law. You also may want to retain the services of an expert in the field to write the actual policy.

You will also have to decide whether your policy will be limited to a certain area, such as media, or if it will encompass all copyrighted works, including text and other print materials, software and the like. If you do include print materials, be sure to involve your librarians in the development process because the copyright law treats print materials differently than audiovisual works in some important respects.

A copyright policy should contain the following:

- sole rights of copyright owners;
- basic information related to the information contained in a copyright notice;
- a discussion of fair use, including some examples;
- a complete discussion of the off-air taping guidelines and a reprint of the entire guidelines;
- a complete discussion of the intent and limitations of the face-to-face teaching exemption. You may also want to discuss this exemption with your staff and recommend that any use of uncleared videotapes must first receive the permission of a specified individual.

You will want to have a discussion of whether or not a school will idemnify an employee who violates any of the announced policy in the event litigation occurs. Caution should be exercised in this regard because teacher contracts may disallow this procedure. Therefore, you ought to consult your school attorney for advice. A statement of professional standards and conduct is necessary, especially since copyright laws are easy to violate and not easy to monitor.

If you intend to include print materials, you will need a discussion of Section 108 which grants to certain libraries under certain conditions the right to make archival copies of print material. Section 108 also describes inter-library loans, neither of which pertain to audiovisual materials.

Although the task of developing a meaningful copyright policy is a formidable one, you and your staff will reap many rewards. It should take most of the guess work out of your dealings in this area. Once you have completed writing the guidelines and have conducted in-service training on them with your staff, you should find that monitoring the use of film and video in your schools is a much easier task.

SAMPLE PERMISSION LETTER FOR OFF-AIR VIDEOTAPING

The following sample permissions letter will serve as a guide to educators and librarians for securing permissions from copyright owners and their agents to make off-air recordings of television programs and to retain and publicly perform those recordings beyond the period of time allowed by the off-air taping guidelines. In order for a legally binding contract to exist, both the user and the copyright holder or its agent must agree to the terms and conditions. It is not sufficient that the party requesting the permission be the sole party even if it is stated in the letter that the other party will be bound if no response is received within a specified period of time, or that the request can be granted automatically without a response. In either case, at best, there exists a unilateral agreement, which is no agreement at all. All permissions should be requested in writing. The request should insist upon a written response.

Request For Permission to Off-Air Duplicate

XYZ Film Co.
Main Street
Centerville, USA

We hereby request permission from your organization to make a recording of the television program entitled _____ to be broadcast in our area on _____, 19____. We will require a license to allow us to retain the off-air copy for _____ years from the date of recording. The license we require will permit our school (or library) to use the program for any public performance within our institution.

Please indicate your consent to this request by filling in the spaces provided below and returning this letter to us.

Sincerely yours,

Centerville School District

Producer-Distributor Reply:

Permission is hereby granted to you in accordance with the above request under the following terms and conditions:

In addition the license fee shall be as follows:

Signed:

_____ _____
Copyright Holder or Agent Date

THE COPYRIGHT LAW: A MORE DETAILED ANALYSIS

The purpose of this section is to provide you with certain basic information related to the provisions of the copyright law applicable to the educational use of copyrighted works, including certain privileges given to educational and library users.

This section will provide you with a more detailed analysis of relevant provisions of the copyright law than was possible to do in the accompanying video presentation and for the most part will stand on its own as well. It is not intended to be a legal treatise, and it is presumed that most of the readers are non-lawyers. Therefore, legal citations and other references will be kept to a minimum.

All references to the copyright law unless otherwise noted are to the law presently in effect. This law was enacted by Congress in 1976 and signed by President Gerald Ford on October 19, 1976. It became effective January 1, 1978 and is cited as Public Law 94-553. It superceded the prior law which was in effect from 1909 until the effective date of the present statute.

BACKGROUND

Powers assumed by Congress in passing the copyright law stem from Article I, Section 8, of the United States Constitution which states in part: "The Congress shall have Power... to promote the progress of Science and useful Arts, by securing for limited times to Authors and Inventors the exclusive right to

their respective writings and discoveries." The present law makes it clear that all other rights falling within the scope of copyright are to be governed exclusively by federal statute. Although any claim of copyright infringement or any other rights that existed under a variety of individual state copyright statutes in effect before January 1, 1978 were not eliminated, any cause of action arising after January 1, 1978 must be governed exclusively by the federal statute.

In the late 1950's, Congress was advised by the Library of Congress that a thorough study of the then copyright laws should be undertaken to determine the need for revision. At that time money was appropriated for such a study which culminated in the general revision enacted in 1976. It is important to note that the educational use of copyrighted works in places such as classrooms and libraries received a good deal of attention and was a significant reason for the delay in final passage.

The purpose of copyright protection is to afford authors, film and video producers and other creators of intellectual properties the right to determine when and how their respective works are to be used. Most lose sight of the fact that when a person acquires possession of a film or video program (or similar creative work), that person only has custody of the property of the author, or in other words, the underlying work. For example, when you purchase a video program, you actually own nothing more than the case and the tape itself, but not the creative work embodied in that tape. The copyright law makes certain requirements on both the copyright holder and the user of the work.

A final thought — the copyright law represents a decent compromise between the interests of copyright owners on the one hand and users of copyrighted works on the other. As is the case with most laws in the United States, every interest group could not end up being fully satisfied with the final result, but every group left its mark on the language of the statute. It is now the task of each and every one of us to understand the law and, to the best of our collective ability, apply it honestly and correctly. The goal of this manual and the copyright video is to assist you in doing this.

RIGHTS OF COPYRIGHT OWNERS

The copyright law grants to the owner of a copyright certain rights and privileges. This is at the heart of the basic theory behind the copyright — that it provide an incentive system to prospective authors or producers which results in the grant of certain exclusive rights during the term of copyright. After this time, the creative work becomes dedicated to the public and enters into public domain. Without the assurance that their works would be their exclusive property, few, if any, individuals or corporations would devote their energies to writing, filmmaking, or to any of the creative acts we rely upon for knowledge and entertainment. The following rights are granted to the copyrighted owner

- to reproduce the copyrighted work in copies
- to prepare derivative works based upon the copyrighted work
- to distribute copies of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease or lending
- in the case of motion pictures (and other types of works) to perform the copyrighted work publicly
- in the case of motion pictures (and other types of works) to display the copyrighted work publicly

It is essential to explain further what these rights mean as a full understanding of them is critical. The first right, the right to make copies, probably needs no elaboration. The copyright owner usually grants this right to a distributor or publisher who deals with the owner on a contractual basis. The second right, to prepare derivative works, means the right to adapt, translate, abridge, or revise the original work. An anthology is often regarded as constituting a derivative work. The third right, to distribute copies to the public, is reasonably clear on its face although one point is appropriate here. In those cases where a copyright owner or its agent sells a work outright, the sole right to distribute is lost. That is not to say that the distributor can enter into commercial distribution and compete with the copyright owner, but it does mean that the distributor can rent or loan the work without permission of the copyright owner and without any obligation to pay royalties. This is known as the "first sale doctrine". Because of the impact of the "first sale doctrine", many educational and informational film and video distributors are now licensing their works for "the life of the tape

or film" or for other periods of time. You need to thoroughly familiarize yourself with the terms and conditions imposed by a distributor in this area.

DEFINITION OF PUBLIC PERFORMANCE

The fourth right of the copyright owner, the right to publicly perform its copyrighted work, is today one of the most critical to be aware of and to understand. To "perform" a work is to exhibit it by means of whatever technology it is designed for. The showing of a film by means of a projector or videocassette player constitutes a performance. Now the question arises as to what constitutes a *public* performance. The definition of public performance found in the copyright laws does not mirror the ordinary dictionary definition. The copyright law defines a public performance as follows: "to perform it (a work) at a place open to the public *or* at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered."

In the Erie BOCES case it was judicially determined that a classroom is one location which constitutes a place where a use of a video program would constitute a public performance. Therefore, under normal circumstances, a public performance license would be necessary for the lawful use of a video in a classroom. Normally, when you purchase a film or video from a traditional educational distributor, the sale price includes public performance rights. Another part of the definition of public performance states: "To perform a work publicly is to transmit or otherwise communicate a performance of the work to the public." It is this section of the law which gives the copyright owner the right to license the broadcast or cablecast of its work.

It should be emphasized that not only is the classroom a place where a use will constitute a public performance, but also such will be the case in a school library, a public library and most other locations within a school or college.

Because of the dramatic developments in technology, the public performance right is extremely important to copyright owners, and one which, if violated, could result in litigation. You should exercise caution in this area, and when in doubt, you are well advised to seek professional advice.

FAIR USE

Fair use, found in Section 107 of the copyright law is perhaps well known, at least by name, to many. It is also one of the most maligned areas of the law because of its important, yet vague, language.

We shall now review the statutory language and then apply further explanations to make it more easily understood. Section 107 reads as follows:

> Notwithstanding the provisions of Section 106 (sole rights of copyright owners) the fair use of a copyrighted work, for purposes such as criticism, comment, news reporting, teaching, scholarship, or research is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use, the factors to be considered shall include:
>
> - the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
> - the nature of the copyrighted work;
> - the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and,
> - the effect of the use upon the potential market for or value of the copyrighted work.

When you consider how important this area of the law is to the educational community in particular, it is surprising how brief the language is. Indeed, many would prefer a much more detailed account of what is and what is not fair use. It is the feeling of many authorities in the field that all interests are better served by this vagueness so as to allow an ever-developing concept which will fit the needs of society at any particular point in time. If fair use were to be precisely defined now, courts would be forced to apply the intent of Congress without much opportunity for interpretation. Obviously such is not the case now, and interpretation can be made without statutory amendment.

Let's review the requirements. Remember, all four requirements must be satisfied in order for a use to be considered a fair use. The first requirement is intended to differentiate commercial uses and noncommercial, educational uses. In the first point, fair use will be applied more often in the case of noncommer-

cial, educational uses and this area should not give you any difficulty.

The second requirement is that you consider the nature of the copyrighted work. To do this, let's compare the differences between a text book and a film or video program. In the case of the book, it is designed to be used by each student individually. On the other hand, the videotape you use is designed for public performances, and the entire intended audience will view it simultaneously so that only a single copy or a very few number of copies will fill your needs. It becomes rather apparent that the comparatively limited market for the videotape mandates that the fair use doctrine be more restrictively applied in the case of the videotape than in the case of the text book. Although it is true that the videotape or film may be more expensive than the text book, only part of the price differential is due to the limited market.

The third requirement of fair use is the so-called quantitative test. In other words, how much of the whole program are you using? Generally speaking, the less of a work you use the greater would be the likelihood of it being a fair use. But we must examine the language from the law again, and as you will note, the criteria is not only how much is used but also the substantiality of the portion used in relation to the work as a whole. As mentioned in the copyright video, if you use the very essence of the work, in spite of its length, there is a good chance it will *not* be fair use. The emergence of a butterfly from its cocoon filmed by means of expensive and rare time-lapse photography may only run a few minutes, but may be the very essence of the entire work. In this example, fair use would *not* apply, even in a noncommercial educational setting.

The fourth and last of the fair use requirements is "the effect of the use upon the potential market for or value of the copyrighted work." What this means is that for a use to be a *fair* use it must not damage either the present or future market for the work. The Senate Report accompanying the copyright law (Report No. 94-473) says, in its comments on fair use, "With certain special exceptions, a use that supplants any part of the normal market for a copyrighted work would ordinarily be considered an infringement." Some educators have advanced the argument that if a school district does not have the funds to purchase a film or video, copying it does not constitute an infringement because the copyright owner did not lose a sale. This argument is certainly invalid from a legal point of view, and indicates a misunderstanding of the law.

Any discussion of fair use must include the GUIDELINES FOR OFF-AIR RECORDING OR BROADCAST PROGRAMMING FOR EDUCATIONAL PURPOSES. These guidelines were developed by a committee of individuals who represented almost every conceivable interest group involved in the production and dissemination of audiovisual materials. The genesis of this committee went back to the last days prior to the passage of the copyright law. As off-air videotaping by teachers and media directors became increasingly popular in the mid-70's, educators and producers attempted to develop some ground rules which would be adopted by the Congress for classroom duplication of literary works. However, the issue was raised too late for Congressional action. Congressman Robert Kastenmeier of Wisconsin, the principal architect of the copyright law, who still chairs the House sub-committee having jurisdiction over copyright, wrote the following in the House Report (94-1476): "The problem of off-air taping for non-profit classroom use of copyrighted audiovisual works incorporated in radio and television broadcasts has proved difficult to resolve. The Committee believes that the fair doctrine has some limited application in this area, but it appears that the development of detailed guidelines will require a more thorough exploration than has so far been possible of the needs and problems of a number of different interests affected, and of the various legal problems presented. . . . If it would be helpful to a solution, the Committee is receptive to undertaking further consideration of the problem in a future Congress."

Although a national meeting under the joint sponsorship of the Copyright Office and the Ford Foundation held at Airlie, Virginia in 1977 did not result in any immediate action, in 1979, at the urging of the Register of Copyrights, Barbara Ringer, Congressman Kastenmeier did appoint a committee whose charge was to develop a set of fair use guidelines in order to lend some substance to and definition in this area.

It took the committee nearly two years to develop these guidelines. They represent a workable compromise and although not everyone has endorsed them, nearly everyone agrees that the guidelines are as liberal an interpretation of the copyright law as has been allowed in this area. For your convenience, the entire wording of these guidelines appears below. A discussion of the most important features follows immediately afterwards.

GUIDELINES FOR OFF-AIR RECORDING OF BROADCAST PROGRAMMING FOR EDUCATIONAL PURPOSES

1. The guidelines were developed to apply only to off-air recording by non-profit educational institutions.

2. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable retransmission) and retained by a non-profit educational institution for a period not to exceed the first forty-five (45) consecutive calendar days after date of recording. Upon conclusion of such retention period, all off-air recordings must be erased or destroyed immediately. "Broadcast programs" are television programs transmitted by television stations for reception by the general public without charge.

3. Off-air recordings may be used once by individual teachers in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary, in classrooms and similar places devoted to instruction within a single building, cluster or campus, as well as in the homes of students receiving formalized home instruction, during the first ten (10) consecutive school days in the forty-five (45) calendar day retention period. "School days" are school session days — not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions — within the forty-five (45) calendar day retention period.

4. Off-air recordings may be made only at the request of and used by individual teachers, and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast.

5. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording.

6. After the first ten (10) consecutive school days, off-air recordings may be used up to the end of the forty-five (45) calendar day retention period only for teacher evaluation purposes, i.e. to determine whether or not to include the broadcast program in the teaching curriculum, and may not be used in the recording institution for student exhibition or any other non-evaluation purpose without authorization.

7. Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.

8. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.

9. Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.

Most of the requirements are straightforward and clear but a few comments are in order. The guidelines are meant to apply only to "broadcast programs" which are television programs transmitted by television stations for reception by the general public without charge. This *excludes* many cable transmissions, including the premium feature film services. The guidelines state that a tape can be made only at the request of an individual teacher and *not in anticipation* of teacher needs. Tapes made under the guidelines can be retained up to 45 *calendar days* following the date of the recording, but may be used in a classroom only once during the *first 10 consecutive school days* following the date of recording. No program may be recorded more than once at the request of the same teacher no matter how many times the program may be broadcast. Most importantly, at the end of the first 10 consecutive school days, the off-air recording can be used *only for evaluation purposes* in order to determine if a long term license will be sought. Teacher use of these off-air recordings is restricted to classrooms and similar places devoted to instruction. If a teacher feels a legitimate need of a second use within the 10 day period for instructional reinforcement, the guidelines do permit it.

The guidelines are silent on the point as to where a tape can be made, but most authorities in the field agree that a tape could be made outside of the instituion, for example in the home, provided that the request to tape is made by a teacher to some school authority and further provided that such a tape be used in strict accordance with the guidelines. In other words, a tape

made at home under the guidelines enjoys no greater privilege than if it were made at the school. It is critical to keep this firmly in mind because some people tend to confuse the restrictions of the guidelines with the home taping privileges given by virtue of the decision by the United States Supreme Court in Universal City Studios vs. Sony Corporation of America (104 S. Ct. 774,1984). In that decision, the Supreme Court declared that the copyright laws do not prohibit off-air recordings by individuals for their personal use in their homes. The decision does *not* permit the use of these tapes outside of the home, particularly in circumstances which would involve a public performance of the tape. As you can readily imagine, the opportunity for abuse is great if you permit taping to be done at home. Therefore, it is strongly urged that you develop controls, which should include the logging in of all such tapes, the placement of labels on the tapes which indicate the date of recording and the date of erasure, and the classroom viewing restrictions.

Fair use is often difficult to explain without the use of hypothetical or real fact situations. Rather than expose yourself or your institution to possible infringements, you are advised to seek clarification and advice from your supervisor.

FACE-TO-FACE EXEMPTION

We previously reviewed the sole rights of the owner of a copyright followed by one of the exemptions, fair use. We will now direct our attention to another exception, this regarding the sole right to authorize public performances. This area is generally referred to as the face-to-face teaching exemption. It is found in Section 110(1) of the copyright law, and although the provisions of it are important for classroom teachers, it is rather limited in scope and therefore, a discussion of what it is and what it is not, is important.

Let us first review the actual language of the statute. It reads as follows: "Notwithstanding the provisions of Section 106, the following are not infringements of copyright: (1) performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a non-profit educational institution, in a classroom or similar place devoted to instruction, unless in the case of a motion picture or other audiovisual work the performance is given by means of a copy that was not lawfully made and that the person responsible for the performance knew or had reason to believe was not lawfully made."

The best manner in which these requirements can be explained is to break up the wording from Seciton 110(1) into its logical parts. Please bear in mind that this section is only relevant in those instances where a classroom performance is planned of a film or video which has *not* been cleared for public performance.

Now then, the first requirement is that the performance be given by an instructor or pupil, thus ruling out presentation by a guest lecturer. Secondly, the performance must involve a face-to-face teaching activity. This means that the material being performed and the teacher and students must be together, although most authorities seem to agree that a use involving a closed circuit television system confined to one building could be utilized. But there is no doubt that the intent was to exclude performances otherwise transmitted into the classroom such as district-wide closed circuit transmission. The next requirement is that the use must be limited to *teaching* activities which rules out use for recreational purposes, entertainment or rewards to the members of the class. The language from the House Report uses the phrase "systematic instruction". The next requirement is that the performance take place at a non-profit educational institution.

A crucial requirement is that the performance takes place in a classroom or similar place devoted to instruction. It is this portion of the language which seems to cause most of the confusion. Although it is true that this requirement does not limit the locale to what we normally think of as a classroom, on the other hand it does have its own set of limitations. A teacher may conduct his or her class in the boiler room of the school but that does not make the boiler room a classroom except at that time. Similarly, a teacher may take his or her class to the library and conduct a session there, and while so doing the library would qualify under the language of this section as a place where the performance of a film or video is lawful. But that event does not make the library a classroom in terms of fulfilling the requirements of Section 110(1) of the copyright law. On the other hand, if a teacher sends a student to the library in order to view a video he missed the previous day, the library is not then functioning as a classroom and there is no face-to-face teaching going on.

Remember, the language states that the performance must take place in a classroom or similar place *devoted to instruction*. A library is not a place normally devoted to instruction although in

the example used earlier, a strong argument can be made in favor of it becoming a classroom when students and their teacher gather together for instructional purposes.

The final requirement of Section 110(1) is that the performance must be given by means of a lawfully made copy, or that the person responsible for the performance had no reason to believe it was not lawfully made. Who the person is that is "responsible" for the performance will be determined by the facts in each instance. Again, please bear in mind that the importance of this public performance exemption only occurs when you are planning to use a program for classroom teaching which has *not* been cleared for public performances. As a practical matter, this most often occurs when you purchase or rent a videotape copy of a program from a home video outlet. Such tapes normally have a warning notice on them stating that they are intended for home use only. In such event, if all the requirements we have just reviewed of Section 110(1) are complied with, a public performance license is not necessary. A word of caution here is important. Many video dealers are requesting patrons to agree to certain terms and conditions at the time of the transaction which actually constitutes a contractual relationship between the parties. In some instances the dealer is requesting that the renter or purchaser sign such an agreement indicating that the tape will be used for home viewing only. In such cases, the contractual obligation supercedes any rights you might have under the copyright law.

Therefore, you are well advised to check very carefully any document which a video dealer requests that you sign. All things considered, you are much better off using programs which have been cleared for public performances, because then there is no question as to where and when you can perform that program, whether it's a library or classroom, or whether it is for instructional purposes or otherwise. The only right which you normally must obtain separately (when acquiring a video through normal channels) is the right to be able to transmit the program.

TELEVISION RIGHTS

As a general rule, most distributors can grant you some television rights, unless prevented by contractual limitations placed on them by the producers. Sometimes television rights cannot be granted to you because the rights have not

been cleared with the performers, directors, and the like, and the clearances would be prohibitively expensive. In other instances, television rights may not be available because the program was obtained from a broadcaster who wants to retain all future broadcast rights. However, the development of cable television and closed circuit systems as educational tools have made it possible to obtain some limited transmission rights even though traditional broadcast rights may not be available. A distributor will require details from you as to what type of a system you are using, the size of your audience and other pertinent information. This will enable the distributor to determine if it possesses the rights you want and the license fee. Since not all distributors base their fees on the same criteria, the information you may have to supply might vary. But one thing remains true in each and every case...it is illegal and a copyright infringement if you transmit a program without permission from either the copyright owner or his/her authorized distributor. Transmitting a program without permission is terribly risky. There is no better way to "announce" an illegal act than to put it on television without having obtained a proper license. When in doubt, always contact your distributor to ascertain the limitations of these or any other rights.

CONCLUSION

It is hoped by all of those responsible for the creation of our copyright video and this viewer guide that the information which has been provided to you is helpful and informative. Those of us who have spent most of our adult lives in the educational business in one capacity or another have witnessed dramatic changes of all kinds. Probably the two most significant changes are the development and availability of video recorders and the passage of the present set of copyright laws. The present law was intended to meet the needs and challenges brought about by technology in order to serve better both creators and users of intellectual properties. The prior law dated back to 1909 with hardly any significant modifications from that year until 1976.

Technology now makes it possible, through the creation of the VCR, for each of us to act as a video laboratory. New transmission systems, satellite delivery and cable television all have their place in improving access. But one thing should remain clear — if we forget about the copyright interest of the creator, this technology may result in diminishing the number of individuals

or corporations who will devote their time, money and energy to create the one ingredient upon which technology is built... the need to have something to perform. The copyright laws are not perfect, nor could they be expected to be. They do, however, represent a decent compromise between the interests of users and creators. It is now our task to learn what the law requires, what rights it gives to each party and to take steps to see to it that the laws are applied professionally and responsibly, no matter which interest we may represent.

COPYRIGHT LAW: WHAT EVERY SCHOOL, COLLEGE AND PUBLIC LIBRARY SHOULD KNOW

was produced by:

F . A . C . T .
(Folks Against Copyright Transgression)

An ad hoc committee formed to produce and disseminate a video production on the subject of copyright. (312) 940-1260

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COPYRIGHT LAW:

What Every School, College and Public Library Should Know

a 21-minute film/video program designed to help eliminate confusion, doubt and legal jeopardy.

This thought-provoking combination of fact and common-practice examples helps you turn the confusing jumble of Copyright Law into a practicable standard for today's educators. A standard you can be proud to pass on to your students.

Join host-moderator Bill Kurtis, Copyright Lawyer Ivan Bender and Congressman Robert Kastenmaier for a 21-minute examination of the copyright issue and how it affects you, the professional educator.

AIME

The Association for Information Media and Equipment

AIME is an association of film and video producers and distributors, equipment manufacturers and others who supply your schools and libraries with the audiovisual materials and equipment you use in your instructional programs. **To help eliminate the confusion, doubt and legal jeopardy, AIME has acted in your interest to assist your institution in establishing formal guidelines regarding copyright.** We want all administrators, teachers, librarians and staff members to know and understand what is legal, and what is not.

AIME, PO Box 865, Elkader, IA 319/ 245/1361

Send me
COPYRIGHT LAW: WHAT EVERY SCHOOL COLLEGE AND PUBLIC LIBRARY SHOULD KNOW
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About AIME

We'd like this opportunity to introduce you to AIME. We suspect you have some curiosity about the association that provides these educational packets.

AIME, the Association for Information Media and Equipment, is the trade association for companies and organizations commercially engaged in the production or distribution of information film/video, the manufacture of equipment or who supply professional services or laboratory services to the information industry.

The primary missions of our association include:

a) stimulating more widespread and more effective use of information film and video;

b) encouraging good school copyright policies, educating schools and libraries on the copyright law regarding film and video, and pursuing copyright violation reports;

c) lobbying for increased funding for school media materials, fair competition laws, and other legislation that would benefit school media centers and libraries;

d) promoting the general welfare and improving the professional status of AIME members by doing market research, statistical surveys, investigation into new technology and cooperative activities at conventions and show exhibits.

Please call if you would like additional information about AIME or about becoming an AIME member.

SUGGESTIONS FOR THE DEVELOPMENT
OF A
SCHOOL COPYRIGHT POLICY

1. Convince your administration of the need for an effective district or institution copyright policy.

    a. point out the liability your school could face according to the law (fines from $250 to $10,000 per violation retribution illegal copies and public embarrassment from the publicity generated) if copyright violations were discovered in your school and prosecuted.

    b. show administrators newspaper articles or the sheets in this packet that briefly tell of several recent copyright cases and their outcomes.

    c. point out that without a copyright policy, legal action may be taken against the institution, the administrators, the school board members, as well as against the teacher or school employee who actually committed the act of copyright law infringement.

2. Provide a good example of a copyright policy to get the ball rolling. Some sample copyright policies are included in this packet.

3. An effective copyright policy provides for these components:

    a. Clear administrative support for the enforcement of the copyright policy.

    b. Specific things to do and not to do regarding performing, displaying, duplicating. Teachers need to understand what is allowed and what is not.

    c. The name or position of a person in the school district who they should ask if they have a copyright question that may not be addressed in the policy.

    d. Inservice of the teachers and other school staff to explain the policy and demonstrate that the school administration is whole-heartedly behind the policy and will enforce it.

    e. A copy of the policy accessible to each school employee.

4. An administer should be assigned to annually inspect the library and any video collections in classrooms to assure all copies being used have been legally acquired.

5. Review your school copyright policy at least every three years. Make any necessary revisions and inservice the teachers and staff on what changes were made.

A Special AIME Report . . .

FREQUENTLY ASKED COPYRIGHT QUESTIONS

By Ivan Bender, Legal Counsel

Without a doubt, educators and librarians ask a variety of questions on copyright, and although it is difficult to characterize them in a general way, the following examples form the basis for many of the queries:

1. Question: My school wants to videotape television programs as they are aired for use during the school year for teaching purposes. Can we do this?

Answer: In 1981 a committee formed by Congressman Robert Kastenmeier developed a set of guidelines governing this kind of activity. Officially called "Guidelines For Off-Air Recording of Broadcast Programming for Educational Purposes" this spells out what can or cannot be done in this area. Although the guidelines never were made a part of the copyright law in a formal sense, they do form a consensus of a variety of interest groups which agreed to them. Congressman Kastenmeier endorsed them on behalf of the Congress and they seem to work reasonably well.

In particular, you should note that any off-air recording under the guidelines can only be made at the request of a teacher. Copying in anticipation of a request or systematic copying is not allowed. The recording can only be retained for a 45-day (calendar days) period beginning with the date of the broadcast, and can be used in a classroom only once during the first 10 consecutive school days following the date of recording. The balance of the 45 days is intended to be for teacher evaluation and for time required in getting permission to retain the program for a longer period of time under a licensing arrangement with the copyright owner or its authorized representative.

This privilege can only be used by non-profit educational institutions and includes only broadcast television, that is, television programs broadcast for reception by the general public without charge. If no permission has been obtained at the end of the 45-day period, or if there is no interest in retaining the program, it must be promptly erased.

2. Question: I have purchased a pre-recorded video program from a home video outlet. Can I use this in my classroom?

Answer: Under certain conditions, yes. Section 110 (1) of the copyright law enables a teacher to use (perform) such a video without a public performance license which normally is required for this purpose. The conditions which must be satisfied are: (i) the use must take place in a non-profit educational institution; (ii) the use must occur in a classroom or similar place devoted to instruction; (iii) the use must be part of the regular instructional process thus ruling out extra-curricular or recreational uses; (iv) the use must be by the teacher and the students, teacher and video must all be face-to-face, thus ruling out transmissions from outside of that building; (v) the video must be a lawfully made copy or the person responsible for the performance had no reason to believe it was not a lawfully made copy.

You should bear in mind, this question only becomes important when dealing with materials which are not cleared for public performance. In addition these restrictions rule out most library uses of video (unless, of course, a public performance license is obtained).

You should always bear in mind that a use of a film or video constitutes a performance, and performances in places like classrooms and libraries are public performances. One of the most important rights of a copyright owner is the right to authorize public performances. The face-to-face teaching provision just reviewed is an exception, but the provisions of that exception must be closely followed in order to avoid liability for infringement.

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3. **Question:** Who is liable for copyright infringement?

Answer: When a copyright proprietor sues for infringement, normally it names in the body of the complaint filed in federal court those individuals (as well as the entity employing them) it believes are responsible. Prior to the time the plaintiff is able to lawfully go in and "discover" the evidence, this is the procedure.

As a suit progresses in court, certain named defendants may be able to get the court to dismiss the claims against them, but in the meantime attorneys must be retained and a defense prepared, not an inexpensive process.

One of the reasons many institutions have developed copyright policies is to set forth guidelines, which if violated, would subject the individual(s) to liability without involving the institution or perhaps those in supervisory capacities, unless, of course, those people condoned the illegal activities.

4. **Question:** Can I transfer my 16mm film collection to video without getting permission?

Answer: No. Even when you "own" a copyrighted work, you do not buy the right to make copies. All of the rights which belong to the owner of a copyright continue to belong to it unless assigned to another or unless the law provides some exception. In the case of copying a work in its entirety, no such exemption exists.

The right to make what could truly be called an "archival" copy extends only under very limited circumstances, and furthermore it is a privilege extended only to libraries whose collection is open to the public or in the case of a library whose collection is not completely open, must be available to researchers working in a related field. Even then, the ability to make an archival copy is limited to instances when a copy is deteriorating, lost, or stolen and the library has first made a reasonable effort to locate an unused copy at a fair price. Then, and only then, may a single archival copy be made.

5. **Question:** How can I tell if a contemplated use is "fair use"?

Answer: Fair use is complex in spite of its brevity in the statute. Prior to the effective date of the present law in January of 1978, fair use was a judicial doctrine and not part of the copyright law of its day. When Congress wrote the present law, the fair use section incorporated the principles of the fair use doctrine without intending to change it. The courts will continue to define what it is or isn't as time goes on and as fair use is asserted as a defense to a claim of infringement.

There are four points to fair use, all of which must be satisfied for there to be a successful application of the doctrine. The amount used is only one part of it, and obviously the less used the better will be the chance of successfully asserting the defense of fair use.

The other parts of fair use (Section 107 of the law) are the purpose of the use, the nature of the copyrighted work and whether the use has any affect upon the potential market or present value of the work. Congress said that if a use supplants what would have otherwise been a sale, there cannot be fair use. However, a person could not claim fair use stating that he or she would not have purchased the work in any event in order to circumvent this requirements.

If you have other questions concerning the use of film or video and the copyright law, call AIME at the number below.

AIME COPYRIGHT HOT LINE: 800-444-4203

© COPYRIGHT GUIDELINES

GUIDELINES FOR OFF-AIR RECORDING OF BROADCAST PROGRAMMING FOR EDUCATIONAL PURPOSES

In March of 1979, Congressman Robert Kastenmeier, Chairman of the House Subcommittee on Courts, Civil Liberties and the Administration of Justice, appointed a Negotiating Committee consisting of representatives of education organizations, copyright proprietors, and creative guilds and unions.

The following guidelines reflect the Negotiating Committee's consensus as to the application of "fair-use" to the recording, retention and use of television broadcast programs for educational purposes. They specify periods of retention and use of such off-air recording in classrooms and similar places devoted to instruction and for homebound instruction. The purpose of establishing these guidelines is to provide standards for both owners and users of copyrighted television programs.

1. The guidelines were developed to apply only to off-air recording by non-profit educational institutions.

2. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable retransmission) and retained by a nonprofit educational institution for a period not to exceed the first forty-five (45) consecutive calendar days after date of recording. Upon conclusion of such retention period, all off-air recordings must be erased or destroyed immediately. "Broadcast programs" are television programs transmitted by television stations for reception by the general public without charge.

3. Off-air recordings may be used once by individual teachers in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary, in classrooms and similar places devoted to instruction within a single building, cluster or campus, as well as in the homes of students receiving formalized home instruction, during the first ten (10) consecutive school days in the forty-five (45) calendar day retention period. "School days" are school session days — not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions — within the forty-five (45) calendar day retention period.

4. Off-air recordings may be made only at the request of and used by individual teachers, and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more then once at the request of the same teacher, regardless of the number of times the program may be broadcast.

5. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording.

6. After the first ten (10) consecutive school days, off-air recordings may be used up to the end of the forty-five (45) calendar day retention period only for teacher evaluation purposes, ie., to determine whether or not to include the broadcast program in the teaching curriculum, and may not be used in the recording institution for student exhibition or any other non-evaluation purpose without authorization.

7. Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.

8. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.

9. Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.

A Special AIME Report . . .

Archival Copying and the Law

By Ivan Bender, Legal Counsel

The policy statement below deals with the archival copying of audio-visual works by educational institutions.

The copying of an entire work is one of the rights held solely by the owner of the copyright, and consequently any copying by others can only be done by virtue of a license granted by the copyright owner for that purpose.

However, as in other instances, this law contains specific exemptions to the sole rights of the owner of a copyright.

. . . There is one provision in the copyright law which does permit archival copying of audio-visual works. This appears in section 108(h). This section permits certain libraries to make archival copies of motion pictures and other audio visual works if the copying is "solely for the purpose of replacement of a copy that is damaged, deteriorating, lost, or stolen, if the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price."

In order for this section to be operative, the library, to qualify for this privilege, must be a library whose collection is "open to the public or available not only to researchers affiliated with the library or archives or the institutions of which it is a part, but also to other persons doing research in a specialized field."

The important things to know here are:

1. this privilege only applies to certain libraries;
2. the privilege applies to programs no longer available on the open market from regular distributors;
3. the library must be able to prove that it performed some research in terms of trying to get a new copy at a reasonable price;
4. the library must own the copy it wants to reproduce for archival copying.

Association for Information Media and Equipment, P.O. Box 865, Elkader, IA 52043

Considering Copyright . . .

By Ivan R. Bender

The Nursing Home Exemption

One recent development which has been cause for a good deal of questions is the so-called "agreement" negotiated last year between most of the member companies which comprise the Motion Picture Association of America and the nursing home industry. Basically, this agreement provides for a public performance exemption for the showing of feature films belonging to the companies in nursing homes and like places which I will describe.

The exemption has given rise to the speculation that it has some implications for the school and library market, which is not the case. First, it should be noted that this exemption has not been accomplished by means of amending the copyright law, but rather was completed after a series of meetings involving the then-Chairman of the House subcommittee having jurisdiction over copyright matters, Robert Kastenmeier and representatives of the principal organizations mentioned earlier. The agreement is stated in a letter from Kastenmeier.

The agreement calls for the exemption when video cassettes are shown in nursing homes and other similar long-term care facilities under circumstances involving a public performance and is intended to be for the entertainment of residents of the location. Nursing home in the sense it is used in the agreement is limited to places where health or health-related care is provided to residents and is not intended to include condominium or retirement complexes where residents live independently in private units and do not regularly receive health related services. In this context, a hospital which operates a long-term care facility separately from the hospital itself could qualify, but it was not intended that the entire hospital would be exempt from the public performance of video.

In order for this process to begin, a nursing home would, operating through its association, enter into an agreement through that association and pay ten dollars to a charitable organization named by authorized film distributors. Once the producer or distributor is notified that the contribution has been made, the nursing home would be eligible to rent or purchase videos for the purpose of performing them in their facility. No charge can be made for the performance and the performance must take place in a public area of the home. No closed-circuit television can be utilized for this purpose.

The motion picture producers who entered into this agreement did so in order to avoid the possibility of formal hearings which might have produced a similar result, or worse. No doubt it has the effect of law in the same fashion that the off-air taping guidelines do, without the necessity of formally amending the law.

There is no doubt that the agreement is a very limited one and has absolutely no bearing on the non-theatrical market outside of nursing homes. I have been asked to explain this agreement in the course of some of my presentations and it would seem that in the beginning some school and library people thought it has some implications for them. Clearly it does not.

Switching subjects now, during the course of answering copyright queries from the AIME "800" line I have learned that the concept of distance learning is gaining a good deal of momentum, especially in more sparsely populated states and in the south-east as well. The concept utilizes satellite reception and although for the most part it now involves tele-courses and material produced by schools, it will not be long before the materials distributed by AIME member companies will be used in more significant numbers. This concept has copyright implications to be sure and also requires licensing from the copyright owner or its agent beyond the confines of closed-circuit television.

I believe we must be certain to make clear to customers that special licenses are required in terms of what is transmitted and received. It is my position that schools and colleges using such a system also need licenses just for the reception of satellite signals in the institution, although such licenses are not necessarily directly in our province.

Ivan R. Bender is an attorney in private practice in Chicago who specializes in copyright

Additional Sources for Copyright Information

For copyright information regarding videos, non-theatrical as well as theatrical, contact AIME or either of the following groups:

Independent Media Distributors Association (IMDA)
ArtBase
PO box 2154
Saint Paul, MN 55102
612 298 0117

Video Software Dealers Association (VSDA)
303 Harper Drive
Moorestown, NJ 08057
609 231 7800
(if you need to get permission from the producer of a specific title and you need help in locating the producer, they may be able to assist)

For Copyright Information regarding computer software contact:

Software Publishers Association (SPA)
1730 M Street, NW, Suite 700
Washington, DC 20036
1-800-388-7478

For Copyright Information regarding music contact:

Music Publishers Association of the United States (MPA)
152 W. 57th Street, 31st Floor
New York, 10019
212 554 0418
(write down your question and mail it to them. Allow 8-10 weeks for a response)

National Music Publishers Association (NMPA)
205 E. 42nd Street
New York, NY 10017
212 370 5330
(they accept calls or letters with questions)

Music Educators National Conference (MENC)
265 Secaucus Road
Secaucus, NJ 07096-2037
201 348 0700
(they work closely with MPA and request that you direct questions to MPA)

American Society of Composers, Authors & Publishers (ASCAP)
One Lincoln Plaza
New York, NY 10023
212 595 3050

Broadcast Music, Inc (BMI)
40 West 57th Street
New York, NY 10019
212 586 2000

SESAC, Inc
156 W. 56th Street
New York, NY 10019
212 586 3450

Dramatico-musical works are licensed by the publisher or, in some instances, by these licensing agencies:

Tams-Witmark Music Library, Inc
757 Third Avenue
New York, NY 10017
212 MU8 2525

Rodgers & Hammerstein Library
598 Madison Avenue
New York, NY 10019
212 486 7378

Music Theatre International
119 West 57th Street
New York, NY 10019
212 975 6841

Samuel French, Inc
25 West 45th Street
New York, NY 10036
212 JU2 4700

The following is the address of the agency which handles recording right for most music publishers:

The Harry Fox Agency
205 42nd Street
New York, NY 10017
212 370 5330

For copyright information regarding theatrical motion pictures contact:

Motion Picture Association of America (MPAA)
California office:
14144 Ventura Blvd
Sherman Oaks, CA 91423
818 995 3600

Washington, DC office:
1600 I Street NW
Washington, DC 20006
202 293 1966

New York office:
1133 Avenue of the Americas
New York, NY 10036
212 840 6161

U.S. Copyright Office
Library of Congress
Washington, D.C. 20559

The Copyright Office provides forms and booklets (some at no cost, others for a charge) on various copyright topics.

We suggest you request these free circulars:

Circular #1: Copyright Basics
Circular #2: Publications on Copyright
Circular #3: Copyright Notice
Circular #4: Copyright Fees
Circular #15a: Duration of Copyright
Circular #22: How to Investigate the Copyright Status of a Work
Circular #92: Copyright Law of the United States of America

The Copyright Office also provides, at no cost, information kits which contain material on the various media formats and topics. The kits include circulars, announcements and application forms. These kits are listed in Circular #2.

Public Information: 202 707 2100 (answering machine only)
or 202 479 0700 (person answers, line is often busy)
Forms and Circulars Hotline: 202 707 9100 (place your order on an answering machine)

Office of the Federal Registry
Washington, D.C.
Phone: 202/523-5230

The Federal Registry provides copies of new legislation. After legislation is a year old, copies may be viewed or duplicated at a depository library or law library.

Television Networks and Cable Networks List

The following is a list of television networks and cable networks which should prove valuable as you request permission to secure licenses of programs which have been taped off-air under the Guidelines.

Please bear in mind that the Guidelines do not include cable programming. It is advisable that you contact each cable network in order to determine the nature of their policies regarding off-air taping for educational purposes.

Under no circumstances should you request this information from individual stations or cable operators as they do not have the right to grant permission unless they own the program which is not often the case.

NETWORKS:

ABC: 212 456 7777; 77 W. 66th St, New York, NY 10023
CBS: 212 975 4321; 51 W. 52nd st, New York, NY 10019
FOX: 213 277 2211; PO Box 900, Beverly Hills, CA 90213
NBC: 212 664 4444; 30 Rockefeller Plaza, New York, NY 10020
PBS: 703 739 5000; 1320 Braddock Place, Alexandria, VA 22314

CABLE TV:

AE Arts and Entertainment Network
212 661 4500; 555 5th Ave, New York, NY 10017

AMC American Movie Classics
516 364 2222; 150 Crossways Park West, Woodbury, NY 11797

BET Black Entertainment Television
202 337 5260; 1232 31st St NW, Washington, DC 20007

BRV Bravo
516 364 2222; 150 Crossways Park West, Woodbury, NY 11797

CNBC Consumer News and Business Channel
201 585 2622; 2200 Fletcher Ave, Ft. Lee, NJ 07024

CNN Cable News Network
404 827 1500; 1 CNN Center, Box 105366, Atlanta, GA 30348

COM Comedy Central
212 408 8500; 1775 Broadway, New York, NY 10019

C-SPAN Cable-Satellite Public Affairs Network
202 737 3220; 444 N. Capitol St, NW, Suite 412, Washington, DC 20001

DIS Disney Channel
818 846 6661; 4111 W. Alameda Ave, Burbank, CA 91605

DISC The Discovery Channel
301 577 1999; 8201 Corporate Dr., Landover, MD 20785

ENC Encore
213 393 3745; 100 Wilshire Blve, Suite 1600, Santa Monica, CA 90401

ESPN Entertainment and Sports Network
203 585 2236; ESPN Plaza, 935 Middle St, Bristol, CT 06010

FAM The Family Channel
804 523 7301; 1000 Centerville Turnpike, Virginia Beach, VA 23463

GALA Galavision
213 286 0122; 2121 Avenue of the Stars, Suite 2300, Los Angeles, CA 90067

HBO Home Box Office
212 512 1000; 1100 Avenue of the Americas, New York, NY 10036

LIFE Lifetime
718 452 4000; 36-12 35th Ave, Astoria, NY 11106

MAX Cinemax
212 512 1000; 1100 Avenue of the Americas, New York, NY 10036

MTV Music TV
212 713 6400; 1775 Broadway, New York, NY 10019

NICK Nickelodeon
212 713 6400; 1133 Avenue of the American, New York, NY 10036

SC Sports Channel
716 524 9444; 820 W. Madison, Oak Park, IL 60302

SHO Showtime
312 983 0100; 444 N. Lakeshore Drive, Chicago IL 60611
or 1633 Broadway, New York, NY 10019

TBS Turner Broadcasting System
404 827 1500; 1050 Techwood Drive, Atlanta, GA 90318

TLC The Learning Channel
202 276 0881; 1525 Wilson Blvd, Roselyn VA 22209

TMC The Movie Channel
212 708 1600; 1633 Broadway, New York, NY 10019

TNN Nashville Network
615 883 7000; 2806 Opryland Drive, Nashville, TN 37214

TNT Turner Network Television
404 827 1990; 1 CNN Center, Box 105366, Atlanta, GA 30348

TRAV The Travel Channel
212 603 4549; 1370 Avenue of the Americas, New York, NY 10019

USA USA Network
212 408 9100; 1230 Avenue of the Americas, New York, NY 10020

VH-1 Video Hits 1
212 713 6458; 1775 Broadway, New York, NY 10019

WOR
201 330 2154; 9 Broadcast Plaza, Secaucus, NJ 07096

RECENT COPYRIGHT VIOLATION CASES

The cases which follow have recently been dealt with by AIME and will help you realize that no school or government agency is so large or so small it becomes immune to the copyright law.

Case 1. University of California - Fullerton. August 1987.

Situation: A report of a possible copyright violation was received by AIME. After many phone calls and personal contacts a letter was sent by AIME to the Vice President for Student Services asking for his assistance in putting a stop to future violations, asking that the University formulate and disseminate a copyright policy to all members of the University and asking that the University take some disciplinary action.

Results: AIME received a reply from the University stating that the individual involved and all other staff members have been provided a copy of the Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes and that the individual involved has agreed to comply with the guidelines.

Case 2. Santa Cruz County School District, California. October 1987.

Situation: A high school teacher allowed a former classroom aide to check out a film under his name. The former aide in turn loaned the film to a personal friend who took the film to a video duplication lab and had copies of the film made.

Results: The master and copies of the film were returned to the producer. A memo was sent from the school administration to all audio visual/textbook clerks and principals in the district reviewing checkout rules and copyright laws. A letter of reprimand was put in the teacher's personnel file. All schools in the District provided inservice/awareness sessions for their teachers and staff. The district adopted an effective copyright policy. The lab involved was investigated by MPAA for its part in this situation.

Case 3. El Dorado Union School District, California. August 1988.

Situation: Programs were taped off air illegally and promoted to other buildings in the district via catalog.

Results: The superintendent met with all librarians and principals to ensure that district policy and lawful procedures regarding the copyright of programs from TV are being followed, to institute corrective procedures to review all video material, and to eliminate any which were not clearly reproduced and retained according to lawful procedures.

The superintendent personally conferred with each librarian about the violation and sent letters of reprimand to those employees who were not in compliance with district policies, procedures, and the law related to this area.

Only those video tapes which were clearly reproduced and used in a legal way were retained by the district. All catalogs listing illegally reproduced materials were removed from circulation and destroyed.

Librarians sent memos to all staff to help them understand the law regarding the use of videotapes. The superintendent personally visited and inspected each library in the district to be sure that they were only in possession of those tapes which conformed to copyright laws.

The superintendent purchased the copyright law videotape from AIME, "Copyright Law: What Every School, College and Public Library Should Know", to assist the district's efforts to keep staff informed about the existing copyright laws, their importance and the legitimacy of the private sector's concerns.

An annual inservice is presented for key district people, including reprographics personnel and librarians. Those who violate the policy will be subject to sanctions by the District.

Case 4. Glenbard North High School, Illinois. April 1989.

Situation: Video programs were illegally recorded off air by teachers for use in their classes.

Results: Glenbard North High School was forced to spend $4265 to purchase the illegally taped 83 video programs. The school administration has since developed a policy and rules about the acquisition and use of videotapes.

Case 5. Dallas County Sheriff's Office, Texas. December 1989.

Situation: The Dallas County Sheriff's Office illegally duplicated videotapes for its own office as well as other county departments, including the Department of Health.

Results: Dallas County agreed to provided a complete accounting of illegally duplicated videotapes, ceased from further duplication unless written permission is first obtained, terminated services regarding copyright advice from a specific Dallas attorney and substituted former guidelines with new ones prepared by AIME's counsel. They implemented the new guidelines beginning with a copyright workshop for county employees conducted by AIME. As part of these guidelines, employees who violate them in the future will face disciplinary action.

Case 6. Norco School District, California. April 1990.

Situation: One or more teachers at the Corona-Norco Unified School District violated the copyright laws that require teachers to tape only broadcast television, to show the program only once within 10 school days and to erase the tape within 45 calendar days. Teachers also illegally copied educational videos for their classes.

Results: After about eight months of closed-door negotiations with AIME, the Corona-Norco school board authorized their attorneys to try to settle the case out of court. The settlement required the school board to approve a policy on copyright law, train district teachers on the copyright law and prepare a press release about the settlement.

Case 7. Parker Unified School District #27, Arizona. August 1991.

Situation: Administrative personnel in this small school district in northern Arizona authorized and condoned the systematic illegal copying of video tapes.

Results: All illegal copies were set aside and inventoried. Those employees who participated in the illegal copying were reprimanded and the disciplinary action was made public. The district prepared a copyright policy and an inservice training session was held for teachers and administrators to explain the copyright law. On behalf its members, AIME received a $10,000 damage settlement from the school district.

AIME Association for Information Media and Equipment

P.O. Box 865, Elkader, Iowa 52043 Phone: 319/245-1361 Copyright Hot Line: 800/444-4203

Press Release

AIME Pursues Allegations of Copyright Violation and Establishes a Copyright Hot Line

Irwindale, CA — An integral part of the copyright program of the Association for Information Media & Equipment (AIME) focuses on infringing acts committed by schools or libraries and others within the traditional area known as the non-theatrical market. Although most educational institutions have increased their knowledge and appreciation for the rights of copyright owners, there are others who pay little or no attention to the requirements of the law.

The mission of AIME in the area of copyright is twofold; one, to conduct an education campaign directed at users regarding the law and at the same time assist in preparing copyright policies; and second, to enforce the law on behalf of its members and when necessary to seek out violators and pursue remedial action. Both aims were accomplished in the Parker Case.

When AIME first learned of allegations of infringing acts being committed by Parker, Arizona schools it received verifiable information that certain videos in the school's collection belonged to several AIME members. It was evident that Parker had not purchased these materials from any authorized source.

AIME took immediate action to confront Parker. In mid-October 1990, a letter was sent to the Superintendent of Parker Schools that reviewed the allegations and made several demands, among which were demands for an immediate "cease and desist" and the impoundment of any illegally made videotapes. Parker responded through their attorneys in Tucson. They indicated a willingness to cease any illegal acts and also promised that Parker would adopt a copyright policy and submit it to AIME for its approval.

Following several letters and telephone conversations, AIME made its final decision to seek monetary damages, while retaining its option to pursue court action. AIME arrived at a settlement of $10,000 based upon its knowledge of the extent of the infringing acts and what the copyright law provided in the way of remedies. In AIME's view, Parker School District committed serious copyright violations.

In order to protect its members and to educate the public AIME has established a Copyright Hot Line. It provides information on copyright law and assistance in preparing copyright policies.

For further information contact AIME's Copyright Hot Line, 1-800-444-4203.

THE PRESS-ENTERPRISE

Tuesday,
October 9, 1990

Corona-Norco
and the Region

B

Copyright issues put schools in a tangle over videotaping

By Kris Lovekin
The Press-Enterprise

NORCO

Teachers who videotaped television programs or copied educational videos for their classes have put the Corona-Norco Unified School District in hot water with an organization that looks for videotape copyright violations.

The Association for Information Media and Equipment (AIME), based in Illinois, says one or more teachers at Norco Senior High School violated laws that require teachers to tape only broadcast television, to show the program only once within 10 school days and to erase the tape within 45 calendar days.

After about eight months of closed-door negotiations, the Corona-Norco school board voted unanimously last week to authorize attorneys to try to settle the case. "We've come to a settlement that if we don't do it anymore, they won't take actions," said Louis VanderMolen, president of the school board.

The vote was not announced to the public but was given to the board's recording secretary. Public agencies are required to announce actions taken in closed session at that meeting or the following one.

VanderMolen said he forgot about it at the public meeting and that is why he told a reporter there was no action except for one expulsion.

"I did forget it, I felt bad about it," he said.

Superintendent Don Helms said the case is not quite settled and that no one should be talking about the details yet.

"About the only thing I can tell you is the board, upon advice from their attorney, agreed to a settlement regarding copyright issues," Helms said. The settlement agreement is expected to come before the board for final action next month.

Ivan Bender, a Chicago attorney who is general counsel to AIME, an Illinois-based non-profit organization that represents

Please see **VIDEOS, B-6**

VIDEOS

Continued from **B-1**

makers of educational videotapes, said he would talk about the case because he values the opportunity to get the word out about videotape copyright laws.

He said AIME received information about Norco High School from a whistle-blower within the district but did not file a lawsuit because the district agreed to negotiate. The settlement — not yet final — is expected to require the school board to approve a policy on copyright law, train district teachers and prepare a press release about the settlement.

He said in the last year, AIME has negotiated with five or six school districts nationwide about copyright violations and all of those cases were settled out of court.

"AIME has never had to impose the fines in the five years it has existed," he said. Fines range from $250 to $10,000 per violation.

He said AIME much prefers to settle with school districts without going to court, because teachers are often unaware of the law or are sure they will not get caught.

"A lot of times they can rationalize it, it's just for the good of the students, they don't intend to sell it," he said. "But what they don't realize is for companies that produce those videotapes, that's their whole livelihood. If they can't market their products to schools, they're really losing tremendously."

Miriam Campbell, a Norco High teacher, said teachers there and at other schools often tape television programs for classroom use. "That's the basis of a lot of our teaching," she said. "Teachers borrow each other's lesson plans, you see a ditto lying around and you take it and make a 1,000 copies." The same goes for videotapes, Campbell said.

Until February of this year, Campbell said she and other teachers stored their home-taped programs in the school library for other teachers to use, a copyright violation, according to AIME guidelines.

The tapes were removed from the libarary in February and soon afterward Norco High principal Maggie Little warned teachers to be careful to follow the copyright laws.

Campbell said teachers at the school were not told why the district was cracking down on them.

"We're trying to be very close to the guidelines," she said. "It's such a gray area."

The Riverside County Office of Education puts out a brochure to help educators navigate that gray area.

Steve Goodson, director of instructional media in the Desert Sands Unified School District, said he uses that brochure in annual teacher orientation sessions so his district does not get caught up in a legal mess.

"If we were not to abide by those rules, there's a lot of students in our district whose parents and aunts and uncles work in the movie industry," he said. "We would be one of the first hit if we were using that."

Teachers beware

The Riverside County Office of Education puts out a brochure on copyright laws for teachers who do not want to risk liability for themselves and their district, including fines between $250 and $10,000 per violation. People with questions may call the AIME copyright hotline at 1-800-444-4203.

These things are against the law:

- Copying commercially made videotapes, such as feature films or educational tapes.
- Taping programs on cable channels, such as HBO or Showtime. There are some exceptions on the Discovery channel.
- Taping a broadcast television program and showing it to a class more than twice within 10 school days. There are some exceptions for PBS programs.
- Taping something off broadcast television and keeping it more than 45 calendar days without permission from the producer.
- The same teacher taping the same program twice, no matter how often it is broadcast.
- Merging more than one program to create an anthology.
- Removing any copyright notice that appears in a program. Copyright notices usually appear in the credits.

Source: Riverside County Office of Education

School board settles video copyright claim

The Press-Enterprise

CORONA

The Corona-Norco school board has settled a claim over videotape copyright infringement.

The settlement, terms of which were released by the plaintiff, was approved in closed session by the school board this week.

Representatives of the Association for Information Media and Equipment (AIME), a non-profit organization based in Illinois, claimed one or more teachers at Norco High School flouted the laws that require teachers to tape only broadcast television, to show the program only once within 10 school days and to erase the tape within 45 calendar days.

Without admitting guilt, the school board agreed to a settlement that includes training for teachers on videotape copyright laws, the drafting of a district policy on the subject and a press release about the settlement to help warn the public about copyright laws.

AIME attorney Ivan Bender said that five or six other school districts in the nation have negotiated over copyright violations and all of them settled out of court.

"AIME has never had to impose the fines in the five years it has existed," he said. Fines range from $250 to $10,000 per violation.

BEST COPY AVAILABLE

A Special AIME Report . . .

AIME SETTLES COPYRIGHT INFRINGEMENT CASE

Late last year, the ASSOCIATION for INFORMATION MEDIA & EQUIPMENT (AIME) received information from an authoritative and knowledgable source that apparent copyright infringements were occuring in Dallas, Texas. The alleged offenders were employees of the Dallas County Department of Health and the Dallas County Sheriff's office.

As part of its regular and on-going efforts to pursue copyright violators, AIME requested and received documentation regarding these allegations, which included titles of videotapes owned and/or distributed by AIME members companies. Once this information was received, counsel for AIME sent cease and desist letters to these agencies, which contained other demands, including a complete accounting of all copies made, erasure of illegal copies and action to be taken against employees involved in the illegal activities. The question of monetary damages was also considered.

The agencies responded almost immediately, and through the office of the District Attorney for Dallas County, a meeting date was set between AIME officials and the agencies from Dallas County. A day-long meeting resulted in settlement in principle of the outstanding issues. Dallas County agreed to provide a complete accounting of illegally duplicated videotapes, cessation from further duplication unless written permission is first obtained, the termination of services regarding copyright advice from a Dallas attorney and the substitution of former guidelines with new ones prepared by AIME's counsel. They also agreed to implement the new guidelines beginning with a copyright workshop for county employees to be conducted by AIME. As part of these guidelines, employees who violate them in the future will face disciplinary action.

The embarrassment to the Dallas County officials and other consequences of being confronted with this matter is rather clear. AIME is constantly watchful for copyright infringement activities. Last year we also stopped a New Hampshire based video duplicator from circulating a mailed announcement regarding its services when we discovered that the duplicator had purposely misled others into believing that, among other things, converting film to video was permissable under current copyright laws.

These are just two examples of how our enforcement policy works. We have received the cooperation from educational organizations and libraries, as well as people in supervisory capacities within school and collegiate institutions. By putting in place an enforcement plan, in addition to AIME's copyright education program, we have established as a goal the elimination of copyright infringement activities within our educational system. We hope you will join us in our efforts.

Association for Information Media and Equipment, P.O. Box 865, Elkader, IA 52043

AIME COPYRIGHT HOT LINE: 800-444-4203

A Special AIME Report . . .

THE BOCES LITIGATION

Where a "fair use" defense failed

In the fall of 1977, three educational film companies filed a copyright infringement suit against an educational institution, making one of the rare times during the course of copyright history that such an event has occurred. The plaintiffs were.Encyclopaedia Britannica Educational Corporation, Learning Corporation of America and Time-Life Films, Inc. The defendant was the Board of Cooperative Educational Services (BOCES), First Supervisory District, Erie County (Buffalo, New York). In addition to the BOCES itself, several individual media supervisors were named as defendants. The basis of the litigation was illegal duplication of plaintiffs' films by means of off-air videotaping of television broadcasts of those films.

The copying was done on a massive scale, and until the complaint was filed in federal court, the BOCES made a practice of videotaping television programs from all of the signals received in that area without obtaining permission from the copyright owners.

It was not until March 31, 1983 that Judge John Curtin released his decision, finding the defendants guilty of copyright infringement. He fined them a total of $63,500 in statutory damages and assessed court costs of $15,000. The legal fees paid by the defendants for their own attorneys was in excess of $200,000.

Judge Curtin did not accept the defense of fair use. In one portion of his opinion, he wrote that "any temporary use by BOCES of plaintiffs' copyrighted works would interfere with the marketability of these works, and the cumulative effect of this temporary videotaping would tend to diminish or prejudice the potential short-term lease or rental markets for these works." Now 7 years old, Judge Curtin's decision stands as a landmark and has not been appealed or in any way overruled.

The action taken by these three companies can only serve to indicate that when a situation becomes intolerable, legal action must be taken. As much as our industry tries to resolve matters of this sort without litigation, if one's business is threatened then it remains the only alternative. And for the school district, this was costly, not only in terms of dollars, but credibility as well. Just think of how many lawfully made videos could have been purchased for that quarter of a million dollars it had to pay out in damages and fees. Several individuals lost their jobs and their reputations were tarnished. The local school board spent a good deal of time on this issue too, and was not pleased to be confronted with it.

Association for Information Media and Equipment, P.O. Box 865, Elkader, IA 52043

COPYRIGHT CONDENSED

(Revised edition, 1987)

HEARTLAND AEA 11 MEDIA CENTER

This publication is a review of the literature on the Copyright Act of 1976 (P.L. 94-553) the Computer Software Act of 1980 and accompanying legislative reports and guidelines. It is meant to be a quick reference to copyright and not a definitive source. It was compiled to help educators become informed about their rights and responsibilities as users of copyrighted materials.

Legal cites, rationale, and discussions are not included in order to make this publication as brief and easy to use as possible.

Questions about this publication may be directed to Susan Schrader, Heartland AEA Media Center, 6500 Corporate Drive, Johnston, Iowa 50131, 515-270-9030 or 1-800-362-2720.

CAVEAT

This publication is intended to be a general discussion and not a definitive analysis of copyright.

HEARTLAND
EDUCATION AGENCY 11

2ND PRINTING

The symbol on the cover has been adopted by the Register of Copyrights and represents the new law's theory that copyright begins at the moment of creation - when the author puts pen to paper.

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INTRODUCTION

Copyright protection is for the life of the author plus 50 years. Copyright protection exists from the time "pen hits paper"; from the time the work is created in fixed form. The copyright of the work IMMEDIATELY becomes the property of the author who created it.

Protection is provided for "original works of authorship fixed in any tangible medium of expression." Copyright protection for an original work of authorship DOES NOT extend to any idea, procedure, process, system, , or discovery.

It is not necessary to register the work in the Copyright Office in order to secure copyright. An author has copyright as soon as the work is in fixed form. Under the law, persons must assume that any work created after 1978 is copyrighted and, therefore, permission to copy should be requested. There are definite advantages to registering a work at the Copyright Office.

WHAT IS COPYRIGHTABLE

Copyrightable works include the following categories:

1. literary works
2. musical works, including any accompanying words
3. dramatic works, including any accompanying music
4. pantomimes and choreographic works
5. pictorial, graphic, and sculptural works
6. motion pictures and other audiovisual works
7. sound recordings

To be copyrightable, a work must be original in the sense that the author has created it by his or her own skill, labor, and judgment; but no large measure of novelty is necessary.

WHAT IS NOT COPYRIGHTABLE

These items or works are not copyrightable:

1. words and short phrases such as names, titles, and slogans
2. familiar symbols or designs
3. mere variations of typographic ornamentation, lettering, coloring
4. mere listing of ingredients or contents
5. ideas, plans, methods, systems or devices
6. blank forms, account books, bank checks, diaries, graph paper, order forms, report forms, scorecards, timecards
7. works consisting of common property-type information

ARE FACTS, RESEARCH COPYRIGHTABLE?

Facts cannot be copyrighted. Factual information is in the public domain so an author can use facts, whether correct or incorrect, that are published in a copyrighted article without asking permission. Copyright permission extends only to an author's expression of facts and not the facts themselves.

EXCLUSIVE RIGHTS OF THE COPYRIGHT OWNER

The copyright owner has five basic rights. Violation of any of these rights is an infringement of the copyright law.

The copyright owner has the right to...

...reproduce the work

...prepare derivative works

...perform the work

...display the work

...distribute the work

BUT WHAT ABOUT FAIR USE?

Congress has given the five exclusive rights to the copyright holder, but Congress also added some limitations. If there were not limits on the owner's rights, it would not be possible to copy anything for any reason without the owner's permission. Some of these limits are outlined specifically in various Sections of the law. Other limits are relegated to the broad interpretations under Fair Use.

"Fair use" has been the cry educators have used when copying for instructional purposes. Educators have a tendency to lump all copying done in the school setting under the banner "fair use" because schools are nonprofit and the copying is done to teach students. "Fair use" is often used as an excuse for copying rather than a well thought out reason for copying. Fair Use is a part of the copyright law.

Section 107 of the 1976 Copyright Act discusses four factors that determine whether copying can be done legally. ALL FOUR of the factors must be considered in determininng fair use. All FOUR criteria must be met before copying of any material is allowed. The law does not give one factor more weight over another. However, the courts have generally placed the most emphasis on the last factor while the second factor is generally accorded the least importance and is also the most unclear of the four.

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes.
2. The nature of the copyrighted work.
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole.
4. The effect of the use upon the potential market for or value of the copyrighted work.

The four factors are explained below.

PURPOSE AND CHARACTER OF THE WORK

If the purpose for copying does not fall into the categories of criticism, comment, news reporting, teaching, scholarship or research, it is not a fair use. The fair use guidelines are not to be interpreted as any sort of not-for-profit or educational "carte blanche" for copying.

NATURE OF THE COPYRIGHTED WORK

"Where the nature of the copyright work is more in the nature of a collection of facts than in the nature of a creative or imaginative work, alleged infringers have greater license to use portions of such work under the fair use doctrine than they would have if creative work were involved." (New York Times Co. v Roxbury Data Interface, Inc.) In other words, copying a news magazine article (factual) is more likely to be allowed under Fair Use than copying a short story (creative).

AMOUNT OF THE WORK USED

The use of an entire work, in other words, wholesale copying, can NEVER be a fair use, even in cases where the infringer had no intent to infringe. Copying a large portion of a work or the "essense" of a work is an infringement.

FAIR USE SUMMARY

Copying parts of or entire works for use in a classroom cannot be done simply because the purpose is educational. The Fair Use statute is used to determine the legality of copying when the instance of copying is not addressed in the other Sections of the Copyright Act. In other words, first look to the Copyright Act and the accompanying guidelines for the permission to copy. If the copying is not specifically prohibited, it MAY be allowed under Fair Use.

GUIDELINES FOR EDUCATION OR CLASSROOM COPYING OF BOOKS OR PERIODICALS

(Not Musical or Audiovisual Works)

There are guidelines established to help educators decide when copying print materials is allowed. GUIDELINES FOR CLASSROOM COPYING IN NONPROFIT EDUCATIONAL INSTITUTIONS was written by educators, authors, and publishers and is a part of the legislative history of the Copyright Act. The GUIDELINES are not a part of the law.

The GUIDELINES are prefaced by the statement: "There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use."

SINGLE COPYING

Teachers may make single copies of a chapter of a book; an article from a periodical or newspaper; a short story, essay, or poem; a chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper to teach a class.

MULTIPLE COPYING

Multiple copies (one copy per pupil in a course) can be made if it meets the criteria of brevity, spontaneity, and cumulative effect and if each copy contains a notice of copyright.

1. Brevity - A complete poem printed on no more than two pages or an excerpt from a longer poem not to exceed 250 words copied in either case.
   A complete article, story, or essay of less than 2,500 words or an excerpt from prose less than 1,000 words or 10% of the work, whichever is less, but in either event a minimum of 500 words to be copied.
   One chart, graph, diagram, drawing, cartoon, or picture per book or periodical issue.
2. Spontaneity - Copying is done by the teacher when there is not a reasonable length of time to request and receive permission to copy.
3. Cumulative Effect - The copying is only for one course and only nine instances of multiple copying per course during one class term is allowed. Not more than one short poem, article, story, essay, or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.

SPECIAL WORKS

Short works such as children's books are often less than 2,500 words. These works cannot be copied as a whole; but an excerpt of not more than two published pages containing not more than 10% of the words found in the text may be reproduced.

PROHIBITIONS TO SINGLE OR MULTIPLE COPYING

You can't copy:

-to substitute for purchase or replacement

-workbooks, exercises, standardized tests, or answer sheets

-the same item by the same teacher term after term

-if it is directed by a higher authority

-if there is a charge to students beyond the photocopy cost

-to create, replace, or substitute for anthologies, compilations, or collective works.

GUIDELINES FOR VIDEOTAPING

OFF-THE-AIR RECORDING

GUIDELINES FOR OFF-THE-AIR RECORDING OF BROADCAST PROGRAMING FOR EDUCATIONAL PURPOSES is a product of Congressman Robert Kastenmeier's committee and is not a part of the law. It does serve as the authority for taping off-air for educational purposes.

1. The guidelines apply only to off-air recording by nonprofit educational institutions.
2. Videotapes may be kept for only 45 calendar days after the recording date. The tapes must be erased after this time.
3. The videotape may be shown to students only during the first 10 school days after the recording date. It may be repeated once for reinforcement. (Points 2 and 3 are the 45-10 rule).
4. Off-air recordings may be made only at the request of an individual teacher and not in anticipation of a teacher request. The same teacher can request the program be recorded only once.
5. If several teachers request the same program be recorded, duplicate copies may be made.
6. After the first 10 school days allowed for showing, the recording may only be used for evaluation purposes.
7. Off-air recordings may not be edited or combined with other recordings to create an anthology or a new work.
8. All copies of the recording must contain a notice of copyright as broadcast.
9. Schools are expected to establish the appropriate controls to ensure compliance with these guidelines.

The above guidelines and the law do not address the situation of a teacher who videotapes a program off-air at home and then uses the videotape in the classroom. A review of the literature indicates that the teacher should follow the above guidelines to comply with the spirit of the law.

PUBLIC BROADCAST PROGRAMS

Public Broadcasting Service, Public Television Library, Great Plains National Instructional Television Library, and Agency for Instructional Television allow educators to videotape their programs off-air under these conditions:

1. Recordings may be made by students or teachers in accredited, nonprofit educational institutions.
2. Recordings may be used only for instruction in a classroom, lab, or auditorium. (Not restricted to one classroom or one teacher).
3. Recordings may not be shared outside of that school.
4. Recordings may be used as ofen as needed for seven days and must then be erased.

"FOR HOME USE ONLY" VIDEOTAPES

Rented videotapes often carry the warning "FOR HOME USE ONLY" which raises the question of whether the rented videotapes may be used in the classroom. If the videotape has been cleared for public performance, there is no problem using it in the classroom.

The gray area revolves around whether a classroom is a public place. The debate over this question will continue until a court case resolves it. In the meantime, a review of literature INDICATES that a teacher COULD show a home-use-only videotape in a classroom with the reasoning that educators have the right to display or perform works in face-to-face teaching situations. A review of the literature indicates that the videotape must meet an instructional goal and not be entertainment for the students.

DISPLAYS, PERFORMANCES, AND COPYING OTHER AUDIOVISUAL WORKS

If there were no exceptions to the five exclusive rights of the copyright owner (the rights to reproduce, prepare derivative works, perform, display, and distribute the copyrighted work) no audiovisual materials could be used in a school. The material would be displayed or performed and would violate the copyright law.

To protect educators when using copyrighed audiovisual materials in a class, the following conditions must be met:

YOU MAY USE AUDIOVISUAL MATERIALS WHEN

1. It is shown as part of the instructional program.
2. It is shown by students, teachers, or guest speakers.
3. It must be shown in the classroom, studio, workshop, library, gym, auditorium.
4. It must be shown in a face-to-face teaching situation or in the same building or general area.
5. It must be shown only to students or educators.
6. Copyright notice must be included and it must be a legitimate copy.

YOU MAY NOT USE AUDIOVISUAL MATERIALS WHEN

1. It is for entertainment or recreational purposes and unrelated to a teaching activity.
2. It is transmitted by radio or television from an outside location (such as closed circuit from another building).
3. It is shown to an audience other than students or teachers, even when students or teachers are present.
4. You may not use an illegally acquired or duplicated coy.

GUIDELINES FOR COPYING MUSIC

The GUIDELINES FOR EDUCATIONAL USES OF MUSIC are not a part of the law but are helpful in determining when copying music is allowed.

COPYING FOR PERFORMANCE

Emergency copying is allowed only if the purchased copies are not available for a performance. The photocopies must then be destroyed.

COPYING FOR ACADEMIC PURPOSES

Single or multiple copies of excerpts may be made if less than 10% of the whole work and if it is not a performable unit such as a selection, movement, or aria.

Purchased music may be edited if the fundamental character of the work is not distorted or the lyrics altered or added if none exist.

A single copy of an entire performable unit can be made if it is out of print or unavailable except in a larger work. It can't be used for performance.

A single recording may be made for aural exercises or tests and may be retained by the school or teacher.

A single copy may be made as a free service for the blind.

A single copy of a student performance may be made for study and for the archives.

A single copy may be made for preservation or replacement in the library when copies are not available for purchase.

COPYING THAT IS PROHIBITED

You can't copy to create, replace, or substitute for anthologies, compilations, or collective works.

You can't copy to avoid purchase.

The following are the addresses of the three performing rights organizations:

American Society of Composers, Authors & Publishers, (ASCAP)
One Lincoln Plaza
New York, NY 10023
(212) 595-3050

Broadcast Music, Inc. (BMI)
40 West 57th Street
New York, NY 10019
(212) 586-2000

SESAC, Inc
156 W. 56th Street
New York, NY 10019
212 586 3450

Dramatico-musical works are licensed by the publisher or, in some instances, by these licensing agencies

Tams-Witmark Music Library, Inc.
757 Third Avenue
New York, NY 10017
(212) MU8-2525

Rodgers & Hammerstein Library
598 Madison Avenue
New York, NY 10022
(212) 486-7378

Music Theatre International
119 West 57th Street
New York, NY 10019
(212) 975-6841

Samuel French, Inc.
25 West 45th Street
New York, NY 10036
(212) JU2-4700

The following is the address of the agency which handles recording rights for most music publishers:

The Harry Fox Agency
205 E 42nd Street
New York, NY 10017
212 370 5330

SCHOOL MEDIA CENTERS AND COPYRIGHTED MATERIAL

AUDIOVISUAL MATERIALS

A school media center may make one copy and circulate the following if it is only a replacement for lost, stolen, or damaged materials that can't be replaced at a fair price:

- musical works
- pictorial, graphic, or sculptural works
- motion pictures

PHOTOCOPYING

A school media center may photocopy a work if damaged and if a replacement is not available at a fair price.

A school media center may photocopy small excerpts of a work (i.e. one article in a magazine) for a student or for interlibrary loan.

A school media center may photocopy the same excerpt on separate occasions if it is not systematic or a substitute for purchase.

The school media center cannot charge for more than the cost of of the photocopy.
All photocopies must have a notice of copyright similar to this:

> This copy is being furnished for private research use only. It may not be further reproduced, resold or used for publication. The customer assumes full responsibility for copyright questions that may arise concerning this reproduction or the use of the material.
>
> Jones High School
>
> OR
>
> This photocopy was made under the provisions of Section 108 of the Copyright Act of 1976.

COPYRIGHT AND COMPUTER SOFTWARE

The Copyright Act of 1976 and the Computer Software Copyright Act of 1980 do not give educators crystal clear guidelines as to when computer software may be copied. There has also been no definitive judicial guidance.

Interpretations of the law have been made by several experts and the following is a summary of those interpretations.

YOU CAN

You can make an archival or back-up copy of a software program that you own. The back-up copy is to be used only if the original fails. You can't use the back-up copy on a second microcomputer simultaneously with the master copy.

You can adapt the program to your use by adding to the content or adapting it to another language. You can't sell, distribute, or transfer the adapted version of that program.

You can loan the computer software in the school media center.

YOU CAN'T

You can't make multiple back-up copies.
You can't make one copy for home and one copy for school.
You can't make a copy for a friend (unless it's public domain).
You can't transmit through a network outside of a school building.

FAIR USE AND SOFTWARE

Educators are concerned about their rights under the provision of Fair Use. As you must meet all four Fair Use criteria, it is not reasonable to use Fair Use as the rationale for copying. A review of the literature indicates that copying computer software for short term, emergency use may be allowed.

COMPUTER LABS

Software use in computer labs is a gray area in some regards. There are differing views of what is allowable. The basic difference in opinion stems from the misunderstanding of what constitutes a copy of computer software.

There are two definitions of making a copy of computer software.

Under the law educators are allowed to make one back-up copy and this copy cannot be used at the time the original is being used. You cannot make several copies of one program for students to use in a lab (even though you have purchased a program, you have not purchased the right to copy the program).

A copy of a computer program is also being made when loaded into the memory of a computer. If you load one program into several microcomputers to be used at the same time, you are making illegal copies and are violating the law. This instance of copying is often overlooked by educators because it produces an intangible copy. This interpretation of copying, although difficult to understand, is accepted by many legal experts whose articles were reviewed for this publication.

YOU MAY NOT

Here is an example of what one expert suggests what you may and may not do with multiple microcomputers. You would likely be IN VIOLATION of the law if you load one program into several microcomputers for use at the same time. (Assuming the program was not packaged and sold for that very purpose). The key here is simultaneous use. To get around this problem of multiple loads for simultaneous use, some companies are using multi-copy pricing and licensing provisions.

YOU MAY

Therefore, it would appear that YOU CAN use one progam sequentially on several microcomputers. That is, load in one microcomputer, use it, turn off the microcomputer, load into another microcomputer, etc. Again, the key is simultaneous use. Simultaneous use is likely in violation of the copyright law; sequential use is not.

LICENSING AGREEMENTS

Some software programs have a statement on the shrink-wrap or the cover that you agree to the conditions for using the program as therein stated. Occasionally the conditions may seem prohibitive.

There have been no judicial guidelines as to whether these licensing statements are legally binding. Until there are some legal guidelines, the experts reviewed for this publication urge educators to be cautious when using any programs with this type of statement.

NOTICE

WARNING CONCERNING COPYRIGHT RESTRICTIONS

- **The copyright law of the United States governs the making of photocopies or other reproductions of copyrighted material.**

- **Photocopies or other reproductions can be furnished only under certain conditions, if they will be used solely for private study, scholarship, or research. Use of the reproduction for other purposes may make the user liable for copyright infringement.**

- **This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.**

On the reverse side is a copyright notice that you may want to copy for your school.

This notice is printed boldly and on a single side for easy duplication.

HOW TO REQUEST PERMISSION TO DUPLICATE COPYRIGHTED MATERIALS

The request to duplicate should be sent, together with a self-addressed return envelope to the permissions department of the publisher or directly to the copyright holder and should include the following information:

1. Title, author and/or editor, and edition of materials to be duplicated.
2. Exact material to be used, giving amount, page numbers, and possible a photocopy of the material.
3. Number of copies to be made.
4. Use to be made of duplicated materials.
5. Form of distribution (classroom, newsletter, etc.)
6. Whether or not the material is to be sold.
7. Type of reprint (ditto, photocopy, offset, typeset).

Don't ask for blanket permission to copy.

SAMPLE SCHOOL BOARD POLICIES REGARDING COPYRIGHT

A district wide policy on copyright is recommended on ethical and legal grounds. Adoption of a policy would indicate the school's desire to comply with the law.

A review of the literature indicates that an institution's copyright policy should contain the following elements:

1. A statement that the board intends to abide by the Copyright Law.
2. A statement prohibiting copying not specifically allowed by the copyright law, fair use guidelines, license agreements, or proprietor's permission.
3. A statement placing the liability for willful infringement upon the person making or requesting the copy.
4. A statement that creates the position of copyright officer for the institution.
5. A statement mandating the development of a copyright manual detailing what copying can and cannot be done by the institution's employees.
6. A statement mandating placement of appropriate notices on or near all equipment capable of making copies.
7. A statement mandating the development and retention of appropriate copyright records.

Six copyright policies that are now in effect across the country are included in this publication. Some policies do not contain all seven elements; but all of the policies are basically sound.

PRINTING AND DUPLICATING SERVICES

Reproduction and Use of Copyrighted Materials - Non-Print/Print

It is the intent of the Governing Board to delineate, enforce, and abide by the provisions of the current copyright laws as they affect the district and its employees.

Copyrighted materials, whether they be non-printed or printed, may not be duplicated without first receiving written permission from the copyright holder or fall within guidelines presented in administrative regulation EGAA-R.

The district does not sanction illegal duplication in any form. Employees who willfully violate the copyright position do so at their own risk and assume all liability-responsibilities.

SOURCE: Grossmont Union High School District, La Mesa, California
DATE: 3/6/78

LEGAL REF.: United States Code, title XVII

DISTRICT SIZE: 9-12; 23,523 students

DUPLICATION OF COPYRIGHTED MATERIAL

Copyrighted materials shall not be duplicated by school district employees or on school district equipment in violation of the exclusive rights of the holders of the copyright on such materials.

Copyrighted materials may be duplicated only with the prior written permission of the copyright holder, or when the duplication constitutes a "fair use" of the materials as that term is defined by law. The school district assumes no liability for infringement of copyright by individual employees.

Specific regulations and guidelines developed to assist school staff in determining the correct procedures in duplicating copyrighted materials shall be widely distributed throughout the district, and shall be strictly observed and adhered to by everyone involved in duplicating materials for school use.

SOURCE: Boulder Valley Public Schools, Boulder, Colorado
DATE: Adopted prior to 1985

LEGAL REFS.: Title 17, U.S. Code (P.L. 94-553, 10/19/76)
Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions, 3/19/76, printed as H.R. 94-1476, pp.70-71

*DISTRICT SIZE: K-12; 23,150 students

COPYRIGHT LAWS IN THE AREA OF MICROCOMPUTER SOFTWARE

The Bellflower Unified School District will adhere to the provisions of copyright laws in the area of microcomputer software.

To discourage violation of copyright laws and to prevent such illegal activities, District employees shall adhere to the provisions of Public Law 96-517, Section 7(b) which amends Section 117 of Title 17 of the United States Code to allow for the making of a back-up copy of computer programs.

The District authorizes the making of a duplicate or an adaptation of a computer program under the following conditions only:

1. that such a new copy or adaption is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner, or
2. that such a new copy or adaption is for archival purposes only and that all archival copies are destroyed in the event that the continued possession of the computer program should cease to be rightful, or
3. that such a new copy or adaption has authorization to duplicate by the manufacturer, and that a courseware use agreement is on file at the District.

When software is to be used on disk-sharing systems, efforts will be made to protect software from copying.

Illegal copies of copyrighted programs will not be made or used on District equipment, and legal or insurance protection will not be extended to employees who violate copyright laws.

Under the direction of the Superintendent, practices shall be established to enforce this policy.

Adopted by the Board of Education: May 24, 1984

Bellflower Unified School District, Bellflower, California

PRINTING AND DUPLICATING SERVICES
REPRODUCTION OF COPYRIGHT MATERIALS

Copyright materials, be they print or nonprint and including computer software, will NOT be duplicated unless such reproduction meets "fair use" standards or unless written permission from the copyright holder has been received.

The Board does not sanction illegal duplication in any form. Employees who willfully disregard the District's copyright position are in violation of Board policy and the law and assume all liability and responsibility related thereto.

Guidelines shall be developed and made available to all employees of the district to insure the fair use of copyrighted work.

The principal of each school site is responsible for establishing practices which will enforce this policy.

REFS.: PL 94-553, Copyright Law

Approved: 06/26/84

Rapid City Area School District No. 51-4, Rapid City, South Dakota

COMPUTER PROGRAM COPYRIGHT PROTECTION

It is the intent of the Hacienda La Puente Unified School District to adhere to the provisions of copyright laws in the area of microcomputer programs. The Board of Education recognizes that computer software piracy is a major problem for the industry and that violations of computer copyright laws contribute to higher costs and lessens incentives for the development of good educational computer programs. This is detrimental to the development of effective educational uses of microcomputers. Therefore, in an effort to protect copyright and discourage infringement violation of copyright laws, the following shall be adhered to:

1. The ethical and practical problems caused by computer program piracy will be a component of all computer instruction in the schools of the district.

2. District employees will be expected to adhere to the provisions of Public Law 96-517, Section 7(b) which amends Section 117 of Title 17 of the United States Code to allow for the making of a back-up copy of computer programs. This states that "it is not an infringement for the owner of a copy of a computer program to make or authorize the making of another copy or adaptation of that computer program provided:

   a. that such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with using a particular machine and that it is used in no other manner, or

   b. that such a new copy and adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful."

3. When software is to be used on a disk sharing system, efforts will be made to secure this software from copying.

4. Illegal copies of copyrighted programs may not be made or used on school equipment.

5. The legal or insurance protection of the district will not be extended to employees who violate copyright laws.

6. The superintendent is designated as the only individual who may sign license agreements for software for schools in the district.

7. The principal of each school site is responsible for establishing practices which will enforce this policy at the school level.

HACIENDA LA PUENTE UNIFIED SCHOOL DISTRICT

Adopted: 6/11/85

COMPUTER ASSISTED INSTRUCTION
(Compliance with Copyrights)

The Board of Education of Washington County recognizes that computer software piracy is a major problem for the industry. Violations of computer copyright laws contribute to higher costs, greater efforts to prevent any copying and fewer incentives for the development of good educational software. These results are detrimental to the development of effective educational uses of microcomputers. Ethical behavior shall be exhibited by all software users.

Further, the Board of Education adheres to the provisions of federal copyright laws that relate to microcomputer programs and establishes supportive regulations which accompany this policy.

Legal Reference: Public Law 96-517 of the United States Code

Policy adopted: March 25, 1985
Board of Education of Washington County
Hagerstown, MD

QUESTIONS AND ANSWERS

The answers to these copyright questions are based upon the opinions of experts in the copyright area whose writings have been reviewed for this publication.

COPYING FROM BOOKS AND PERIODICALS

Q. May a teacher make a transparency from a book?

A. Yes, this falls within the guidelines of single copying for classroom use.

Q. Can a teacher duplicate materials and put them on reserve at the library?

A. Yes, if the copying is spontaneous and if copying falls under guidelines for education or classroom use of books and periodicals or is a fair use.

Q. A teacher finds an O. Henry short story that would fit into a unit to be taught next week. Can multiple copies be made for the class?

A. Yes, since it was at the inspiration of the teacher and also meets the criteria of brevity. The copies can't be used next term.

A. Can a teacher make copies from a workbook?

A. No, workbooks are consumable materials and can't be copied.

Q. Some materials are marked as follows: "All rights reserved. No part of this book may be reproduced or utilized in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without permission in writing from the publisher." Can this material still be copied for education purposes?

A. Yes, fair use would still apply.

Q. A teacher ran across a book that has no copyright notice. Can copying be done freely in this instance?

A. No one can be certain that work is in the public domain unless a notice states that reproduction is permitted. When in doubt about copyright status, ask for permission to copy or contact the Copyright Office.

Q. How strict are the Guidelines For Classroom Copying?

A. The purpose of the guidelines is to state the minimum and not the maximum standards of educational fair use. There may be instances where copying doesn't fall within the guidelines but is permisible under the criteria of Fair Use.

COPYING MUSIC

Q. In order to avoid damaging records, the media center has made cassette tapes for circulation.

A. This is not allowed because, a.) it is a substitute for purchase of possible replacement copies and, b.) copying of an entire work is not allowed.

Q. A teacher is making a sound slide presentation and wants to use several popular songs as background. Is this allowed?

A. Using portions of songs (less than a performable unit) is probably allowed; however, using an entire song is not.

Q. The music teacher has changed the lyrics of a song to be presented at the Spring Banquet in order to be more contemporary. Can 30 copies be made for the choir?

A. No, altering or adding lyrics changes the fundamental character of a work and is not allowed under the copyright guidelines.

Q. Several students forgot their music the night of the band performance. Can copies be made just for use that night?

A. Yes, emergency copying to replace purchased copies is allowed. The duplicates must be replaced by the originals.

Q. A teacher wants to make a cassette copy of a Beethoven record in the media center so that the music can be stopped and started easily. The cassette will be used for the final exam in music.

A. Yes, one copy of the record can be made for exams or aural exercises and may be retained by the school or teacher.

COPYING AUDIOVISUAL MATERIALS

Q. The school only has one slide projector. Since the school has several filmstrip projectors, can some of the slides which the school owns be converted into filmstrips?

A. No, this type of copying is prohibited. Even though the school has purchased the slides, the right to copy the slides was not purchased.

Q. A couple of teachers have some filmstrips that would like to combine into one. They will make only one copy that will be for instructional purposes.

A. This is not allowed under the guidelines. Written permission must be obtained.

COPYING OFF-THE-AIR

Q. Can a school tape a movie off-air and use it in the classroom?

A. Yes, if: a teacher specifically requests the copy be made, a notice of copyright is included, it is shown to students within 10 school days, it is erased within 45 days (unless you want to preview it at a later date for possible purchase), and is used for instructional rather than entertainment purposes.

Q. Can a teacher tape a movie at home and show it in a class?

A. Yes, following the guidelines in the previous answer.

Q. Can a media specialist videotape a program that the science teacher may want to use in class?

A. Not really. According to the guidelines, the teacher must request that a specific program be videotaped.

Q. Can a teacher show last Sunday's Walt Disney cartoon during a rainy recess?

A. No, the videotape must be used for instructional, not entertainment purposes.

Q. Can the school show a group of parents and students a recently televised program on drugs?

A. Probably not. The presence of parents constitutes a public performance.

Q. Can a program taped off-air be transmitted to several classroom via closed circuit?

A. Probably. Closed circuit may be considered similar to a face-to-face teaching situation. The question comes in when the transmission is from one building to another.

USING HOME-USE-ONLY VIDEOTAPE

Q. Can you use a videotape in a class if it was rented at a video store?

A. Probably. The question arises if showing a video to a groups of students constitutes a public performance. The experts differ. You can probably show the videotape if it is for instructional, not entertainment purposes.

Q. Can you make a copy of videotape that was rented if it is used only once and within 10 days?

A. No, copying an entire work that you do not have permission to copy is a violation of the copyright law.

COPYING COMPUTER SOFTWARE

Q. Our school has limited funds, can we make 10 copies of a program to check out from the media center for just a two-week period?

A. No. You purchased one copy, not the right to make additional copies.

Q. Once the shrink-wrap is broken, is the school bound by the restrictions on the label?

A. This is a gray area. Whether the restrictions/warnings are binding will have to be decided in the courts.

Q. Can a teacher change the language of a computer program?

A. Yes, the program may be adapted.

Q. Can a computer program be loaded into six computers so that six students can use it at the same time during class?

A. Probably not. It is a simultaneous use of the software and is more than likely a violation. Copies are being made when the program is in the computer memory.

Q. Can you make a copy of a software program so that it can be used at home and at school?

A. One copy may be made of software that you own, and that is the back-up copy.

LOS ANGELES UNIFIED SCHOOL DISTRICT
Office of the Associate Superintendent, Instruction
Media Services, Janet K. Minami, Director.
1320 West third Street
Los Angeles, CA 90017
Phone: 213/625-6971

BULLETIN NO. 91
December 16, 1988

SUBJECT: GUIDELINES FOR THE USE OF VIDEOTAPES AND FILMS NOT OWNED, BROADCAST, OR RECOMMENDED BY THE DISTRICT

I. Background
II. Guidelines

I. BACKGROUND

It is the policy of the Los Angeles Unified School District to provide students with appropriate instructional materials that are relevant to the curriculum being studied and appropriate for the age and maturity level of the students being taught. Because of the widespread use of videocassette recorders, ease of home videotaping, and availability of rental videotapes and films, the Board of Education on October 17, 1988, established Districtwide guidelines for the use of videotapes and films not owned, broadcast, or recommended by the District.

Currently, videotapes and films are available to District staff: (1) from the 20,000-item Film-Video Library at the Third Street Annex; (2) by the broadcasting of films owned by the District over KLCS-TV Channel 58 and which can be locally videotaped; and (3) by schools purchasing videocassettes recommended in the Audiovisual Materials Resource List compiled by Audiovisual Services and sent to the schools.

The rating system of the Motion Pictures Association of America (MPAA), established in 1968, is the basis for the Board guidelines on the use of videotapes and films not owned, broadcast, or recommended by the District. (See Attachment A for MPAA definitions of the PG, PG-13, R, and X ratings.)

II. GUIDELINES

A. Videotapes or films shown at a school must be relevant to the curriculum being studied and appropriate for the age and maturity level of students being taught.

B. Videotapes or films shown at a school must use the established District and State criteria for the evaluation of instructional materials, especially with respect to racial and gender stereotyping and the depiction of violence, even in animation. (Refer to the Office of the Associate Superintendent, Instruction, Bulletin No. 82, May 1, 1987, "Criteria for Evaluating Instructional Materials" for details.)

C. Videotapes or films must be consistent with accepted standards of professional responsibility, rather than of programs reflecting advocacy, personal opinion, bias, or partisanship.

D. Videotapes or films which have not been MPAA rated and are not owned, broadcast, or recommended by the District must be thoroughly reviewed by the instructor prior to their use.

E. MPAA X-rated videotapes or films or any unrated material which might fall into this catergory shall not be shown or used in any elementary or secondary school classroom or as a part of any District activity involving elementary or secondary school students.

F. MPAA R-rated videotapes or films or any unrated material which might fall into this category may be used in secondary schools with principal and parental approval prior to the scheduled viewing date and must comply with the school's policy on the evaluation and selection of instructional materials. (See Attachments B and C for the prior approval letter for parents and Attachment D for the prior approval form for the principal.) In the event that opinions differ over the appropriateness of the materials to be used, the appeal process as outlined in Article XXV, Sections 1.2 and 1.3 of the Agreement between the District and UTLA shall be followed.

G. MPAA PG-13-rated videotapes or films or any unrated material which might fall into this category may be used in secondary schools with the prior approval of the principal and must comply with the school's policy on the evaluation and selection of instructional materials. In junior high schools, parental approval prior to the scheduled viewing date is also required. In the event that opinions differ over the appropriateness of the materials to be used, the appeal process as outlined in Article XXV, Sections 1.2 and 1.3 of the Agreement between the District and UTLA shall be followed.

H. MPAA PG-rated videotapes or films or any unrated material which might fall into this category may be used in elementary schools with the prior approval of the principal and parents and must comply with the school's policy on the evaluation and selection of instructional materials. In the event that opinions differ over the appropriateness of the materials to be used, the appeal process as outlined in Article XXV, Sections 1.2 and 1.3 of the Agreement between the District and UTLA shall be followed.

For assistance, please call Janet Minami, Director, Media Services, at (213) 625-6971 or Elaine Danny, Director, Instructional Television Programming, KLCS-TV, at (213) 625-6958.

APPROVED: SIDNEY A. THOMPSON, Deputy Superintendent, School Operations

DISTRIBUTION: All Schools and Offices

WHAT THE RATINGS MEAN

PG: "Parental Guidance Suggested; some material may not be suitable for children."

This is a film which clearly needs to be examined or inquired about by parents before they let their children attend. The label PG plainly states that parents may consider some material unsuitable for their children, but the parent must make the decision.

Parents are warned against sending their children, unseen without inquiry, to PG-rated movies.

There may be some profanity in these films. There may be violence but it is not deemed so strong that everyone under 17 need be restricted unless accompanied by a parent. Nor is there cumulative horror or violence that may take a film into the R category. There is no drug use content.

There is no explicit sex in a PG-rated film, although there may be some indication of sensuality. Brief nudity may appear in an unrestricted film, but anything beyond that puts the film into R.

The PG rating, suggesting parental guidance, is thus an alert for special examination of a film by parents before deciding on its viewing by their children.

Obviously the line is difficult to draw. In our pluralistic society it is not easy to make subjective judgements without incurring some disagreement. So long as parents know they must exercise parental responsibility, the PG rating serves as a meaningful guide and as a warning.

PG-13: "Parents strongly cautioned. Some material may be inappropriate for children under 13."

PG-13 is thus a stern warning to parents to determine for themselves the attendance in particular of their younger children as they might consider some material not suited for them. Parents, by the rating, are alerted to be very careful about the attendance of their under-teenage children.

A PG-13 film is one which, in the view of the Rating Board, leaps beyond the boundaries of the PG rating, but does not quite fit within the restricted R category. Any drug use content will initially require at least a PG-13 rating. In effect, the PG-13 cautions parents with more stringency than usual to give special attention to this film before they allow their 12-year-olds and younger to attend.

If nudity is sexually oriented, the film will generally not be found in the PG-13 category. If violence is rough or persistent, the film goes into the R (restricted) rating. A film's single use of one of the harsher sexually-derived words, though only as an expletive, shall require the Rating Board to issue that film at least a PG-13 rating. More than one such expletive must lead the Rating Board to issue a film an R rating, as must even one of these words used in a sexual context. These films can be rated less severely, however, if by a unanimous vote, the Rating Board feels that a lesser rating would more responsibly reflect the opinion of American parents.

PG-13 places larger responsibilities on parents for their children's moviegoing. The voluntary rating system is not a surrogate parent, nor should it be. It cannot, and should not, insert itself in family decisions that only parents can, and should, make. Its purpose is to give prescreening advance informational warnings, so that parents can form their own judgments. PG-13 is designed to make these parental decisions easier for those films between PG and R.

R: "Restricted, under 17 requires accompanying parent or adult guardian." (Age varies in some jurisdictions.)

This film contains some adult-type material respecting language, violence, nudity, sexuality or other content. Parents are advised in advance that the film contains mature material and they take their children with this advisory clearly in mind.

The language may be rough, the violence may be hard, drug use content may be included, and while explicit sex is not to be found in R-rated films, nudity and lovemaking may be involved.

The R rating is thus strong in its advance advisory to parents as to the adult content of the film.

X: "No one under 17 admitted."

This is patently an adult film and no children are allowed to attend. It should be noted, however, that X does not necessarily mean obscene or pornographic in terms of sex, language, or violence. The Rating Board does not attempt to mark films as obscene or pornographic; that is for the courts to decide legally. The reason for not admitting children to X-rated films can relate to the accumulation of sexually connected language, or of explicit sex, or of excessive and sadistic violence.

From The Voluntary Movie Rating System, Motion Picture Association of America, 1987.

SAMPLE LETTER SAMPLE LETTER

SCHOOL LETTERHEAD

Date

Dear Parents or Guardians,

Your child is currently involved in studying _____
_____
(describe unit of study and class, if appropriate). It is our intention to use the videotape _____ (title) on _____(date) because _____
_____
(describe the use of this videotape in relation to your academic goals and objectives).

This letter is being sent to you in compliance with the District policy requiring parents/guardians to approve the intended use of videotapes or films which are not owned, broadcast, or recommended by the District prior to their scheduled showing. As part of that policy, we ask you to complete the form below, authorizing or exempting your child from the videotape showing. Please return your completed form to your child's teacher. Students exempted from this showing will be required to complete an alternative assignment. Should you have any questions regarding the videotape, please contact me.

_____
Signature of principal

(name of school)

Name of student: _____

Please check A or B:

A. ____ I give permission for my child to view _____

B. ____ I prefer that my child be given an alternative assignment.

Signature of parent or guardian: _____

Date: _____

MUESTRA DE CARTA MUESTRA DE CARTA

MEMBRETE DE LA ESCUELA

FECHA

Estimados Padres o Tutores,

Su hijo/a ahora está participando en estudiar _____

_____

(describa el curso de estudio y la clase, si es apropiado). Tenemos la intención de usar el video _____ (título) el _____ (fecha) porque _____

_____

(describa el uso de este video con relación a sus metas y objetivos académicos)

Esta carta está siendo enviada para cumplir con las normas del Distrito, las cuales requieren que los padres/tutores aprueben el uso de películas y videos que no han sido transmitidos o recomendados, ni son propiedad del Distrito antes de exhibirlos como han sido programados. Como parte de esas normas, le suplicamos llenar la forma siguiente, autorizando o disculpando a su hijo/a de asistir a la exhibición del video. Por favor regrese esta forma al maestro/a de su hijo/a. Los estudiantes que están disculpados de asistir a esta exhibición, tienen la obligación de hacer otro trabajo. Si tiene alguna pregunta relacionada con el video, por favor comuníquese conmigo.

_____
Firma del director

(nombre de la escuela)

Nombre del estudiante: _____

Por favor marque la A o B:

A. ____ Doy permiso para que mi hijo/a vea _____

B. ____ Prefiero que se le dé a mi hijo/a otro trabajo.

Firma del padre o tutor: _____

Fecha: _____

SAMPLE FORM

SAMPLE FORM

LOS ANGELES UNIFIED SCHOOL DISTRICT
_____SCHOOL

STATEMENT REGARDING VIDEOTAPE OR FILM USE

(FOR MATERIAL WHICH IS NOT OWNED, BROADCAST, OR RECOMMENDED BY THE DISTRICT)

Date: _____

Teacher's name: _____ Room _____

Title or description of program: _____

_____

Producer (if known): _____

Network (if known): _____

Material: Rented _____

Purchased _____

Taped at home _____

Parental permission is required: Yes___ No___

I plan to use the above program in my classroom on _____(date) for the following reason (describe its use in relation to your academic goals and objectives):

_____

_____

This program complies with the school's policy on the evaluation and selection of instructional materials. It is appropriate for the grade level and the instructional content enhances the curriculum. If this program has been recorded off-air, I affirm that it will be erased according to "fair use" interpretations of federal copyright regulations.

_____
Teacher's signature

Approved: _____ _____
Principal's signature Date

COPYRIGHT POLICY

It is the intent of the Board of Education of Carmel Clay Schools to adhere to the provisions of the current copyright laws and Congressional guidelines.

The Board recognizes that unlawful copying and use of copyrighted materials contributes to higher costs for materials, lessens the incentives for development of quality educational materials, and fosters an attitude of disrespect for law which is in conflict with the educational goals of this School Corporation.

The Board directs that Corporation employees adhere to all provisions of Title 17 of the United States Code, entitled "Copyrights", and other relative federal legislation and guidelines related to the duplication, retention, and use of copyrighted materials.

The Board further directs that:

1. Unlawful copies of copyrighted materials may not be produced on Corporation-owned equipment.

2. Unlawful copies of copyrighted material may not be used with Corporation-owned equipment, within Corporation-owned facilities, or at Corporation-sponsored functions.

3. The legal and/or insurance protection of the Corporation will not be extended to employees who unlawfully copy and use copyrighted materials.

Employees who make and/or use copies of copyrighted materials in their jobs are expected to be familiar with published provisions regarding fair use and public display, and are further expected to be able to provide their supervisor, upon request, the justification under Sections 107 or 110 of USC 17 for copies that have been made or used.

Employees who use copyrighted materials which do not fall within fair use or public display guidelines will be able to substantiate that the materials meet one of the following tests:

1. The materials have been purchased from an authorized vendor by the individual employee or the Corporation and a record of the purchase exists.

2. The materials are copies covered by a licensing agreement between the copyright owner and the Corporation or the individual employee.

3. The materials are being reviewed or demonstrated by the

(This policy was adopted by the Board of Directors of Carmel Clay Schools, 5201 East 131st St., Carmel, IN 46032. Telephone 317/844-9961. Karen K. Niemeyer, Director of Media Services.)

user to reach a decision about possible future purchase or licensing and a valid agreement exists which allows for such use.

Though there continues to be controversy regarding interpretation of the copyright laws, this policy represents a sincere effort to operate legally. All school employees will be provided with copies of this policy and accompanying rulings.

Adopted 1-27-86

Guidelines for
Use of Copyrighted Materials

Copyright is the exclusive right that protects an author, composer, author, or programmer from having his or her work published, recorded, exhibited, translated, or reproduced by way of copies and other versions, except by permission. The purpose of copyright is to encourage the development of new and original works and to stimulate their wide distribution by assuring that their creators will be fairly compensated for their contributions to society.

Current American copyright law is embodied in Title 17 of the United States Code. Works of authorship include, but are not limited to, the following categories: computer programs; dramatic works, including any accompanying music; literary works; motion pictures and other audiovisual works; musical works, including any accompanying words; pantomines and choreographic works; pictorial, graphic, and sculptural works; and sound recordings.

The law affects classroom practices and necessitates that educational staff examine:

- WHAT they copy
- HOW MUCH they copy
- the PURPOSES for which they copy
- the CONDITIONS under which they copy

Of special interest to educational staff are the "fair use" doctrine and the accompanying Congressional guidelines which stipulate what may and may not be copied for use in schools and classrooms.

The following pages explain some highlights of the law and its accompanying guidelines. The guidelines, while not law, were generated in response to questions. They will be modified by future court decisions and legislative action. However, they are an interpretation of the law as developed by Congressional sub-committees.

If there are questions not covered by these pages, staff members should contact the Office of Media Services.

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COMPUTER SOFTWARE

A teacher may:

... make one archival or back-up copy of a copyrighted program. The school must keep this copy in storage and may only use

the copy if the original has been damaged and has been sent to the publisher for repair.

... adapt a copyrighted program from one language to another for which it is not commercially available or add features to a program to better meet local needs.

... write the publishers of copyrighted programs in order to obtain permission to use the software in a manner that could be a violation of the copyright law.

A teacher may not: (without the express permission of the software publisher/copyright owner)

... make multiple copies of copyrighted software (or a locally produced adaptation or modification), even for use within a school or school district.

... make replacement copies from an archival or back-up copy.

... make copies of copyrighted software (or a locally-produced adaptation or modification) to be sold, leased, loaned, transmitted, or even given away to other users.

... load a copyrighted program into several computers or a network from the same diskette and use them simultaneously.

... make multiple copies of the printed documentation that accompanies copyrighted software.

SUGGESTIONS:

Remember that WITH PERMISSION FROM THE COPYRIGHT OWNER the above prohibitions may be removed...or at least significantly modified.

A teacher should be skeptical of those who say, "Go ahead and copy; nobody will ever know." The teacher will know. Illegal copying of software is theft of the software authors' and publishers' legitimate right to produce income from their efforts.

The cost of necessary multiple copies of software should be included in the budget for educational projects. Buying enough will relieve the temptation to make unauthorized copies. The Office of Media Services will make every effort possible to provide funds for worthy projects. Teachers may discover that the school system already has several copies of the software needed; these could be gathered together for a project.

Teachers may inquire from OMS about special licenses available from software companies that allow the user to make and use multiple copies at reduced cost. It is necessary to follow the guidelines set up by the license so that software publishers will be encouraged to provide them to schools.

Staff should be responsible for ensuring that no copies are made of software that is provided by the software publisher for preview or approval. Copying of such materials has discouraged many software companies from allowing preview or purchase on approval.

Guidelines for video and audio recordings, books, periodicals, music, etc., do not apply to microcomputer software. Computer software is different from these other materials, and no copyright guidelines have been approved by national educator-publisher committees as have been for other materials.

Members of computer clubs that are allowed to use school facilities should agree to adhere to the Copyright Law during meetings. A teacher or sponsor who allows these clubs to violate the law may share legal liability with the club.

Educators are role-models and should discourage students from making and using copies of copyrighted software. Nor should staff trade copies with students or ask them to produce copies. Staff should not use illegal copies of software with students or allow them to see illegal copies in use.

Staff should use reasonable care in protecting the copyrighted software owned by the school corporation from being copied by students. Part of the responsibility of owning software is to keep others from copying it illegally.

Staff members should not ask another educator who is more knowledgeable about computer software to make a copy of copyrighted software. Friendship is not a good reason for breaking the law. Making copies of copyrighted software for someone else is as illegal as making them for oneself.

All staff should share with others personal respect for the Copyright Law. Such honesty, hopefully, will inspire others.

DATABASE DOWNLOADING

Downloading involves the transmission of data from a remote or host computer to the user's on-site premises storage device for later searching, manipulation, or storage.

A teacher/student may:

...download to the printer bibliographic citations or full text of a document identified during a search of DIALOG, Wilsonline, etc., as the terms of the school's contract with the vendors specify. It is assumed that the user will require no more than 20-30 citations, will be using a legitimate password/subscription for invoice purposes, and has local approval to order, receive, and provide payment for a full-text document or citations.

...use downloaded material for individual research or teaching.

A teacher/student may not: (without express written consent of the database vendor)

...keep archival copies of downloaded works

...download a "substantial taking" (complete database or most of the records). Note that this criterion also includes a qualitative aspect. For example, if several records were retrieved from a large database but these records were qualitatively superior to the others the use could also be considered a "substantial taking".

...make commercially available the downloaded material. All four fair-use criteria apply to downloading, but the economic aspect has generally been regarded to be the most important.

PHOTO AND/OR THERMAL COPYING

A teacher may:

... make one copy, for scholarly research or use in teaching or preparation to teach a class, of a chapter from a book, an article from a periodical or newspaper, a short story or short poem, or one chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper. A music teacher may make one copy of a lost part in an emergency if it is replaced with a purchased part in due course.

... write to the publisher of copyrighted material to obtain permission to exceed the limitations of the Copyright Law. The copyright owner will be best able to efficiently answer if the teacher provides one copy of the exact material desired, describes the use and number of copies intended, and allows at least 30 days for an answer.

... make multiple copies (not to exceed more than one copy per pupil in the course) for classroom use or discussion, provided that the copying meets the tests of brevity and spontaneity (defined below), meets the cumulative effect test (defined below), and includes a notice of copyright on the sheets copied. For class study a music teacher may make one copy per student of up to 10% of a musical work, as long as that 10% does not constitute a performable unit.

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TESTS OF FAIR USE REGARDING BREVITY, SPONTANEITY, & CUMULATIVE EFFECT
The definitions vary with the type of medium being copied.

BREVITY

(a) POETRY: a complete poem if less than 250 words and if printed on not more than two pages, or

from a longer poem, an excerpt of not more than 250 words (A teacher may complete an unfinished line of a poem.)

(b) PROSE: a complete article, story, or essay of less than 2500 words, or

an excerpt from any prose work of not more than 1000 words or 10 per cent of the work, whichever is less, but in any event a minimum of 500 words (A teacher may complete an unfinished line of a prose paragraph.)

(c) ILLUSTRATION: one chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue

(d) SPECIAL WORKS: Certain works in poetry, prose, or in "poetic prose" which often combine language with illustrations (e.g., picture books for children or adults) may fall short of 2500 words in their entirety. Such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than 10 per cent of the words found in the text may be reproduced.

PRINTOUTS: from an online search may not be reproduced in their entirety. Two pages or up to 10% of the text may be reproduced.

SPONTANEITY

(a) The copying is at the instance and inspiration of the individual teacher, and

(b) the inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission. (A teacher should not claim spontaneous use a second time for material previously used under the "spontaneity" test.) A letter of "request for permission to duplicate" should be sent to the copyright owner after/during a spontaneous use. The response to that letter will determine future use of the material.

CUMULATIVE EFFECT

(a) The copying of the material is for only one course in the school in which the copies are made.

(b) No more than one short poem, article, story, essay, or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.

(c) There shall not be more than nine instances of such multiple copying for one course during one class term.

(The limitations stated in (b) and (c) above do not apply to current news periodicals and newspapers and current news sections of other periodicals.)

****

The Copyright Law and Guidelines are interpreted below as they apply to various teaching/learning situations.

A TEACHER MAY NOT: (without express written consent of publisher)

...copy without including copyright notice

...copy to create or to substitute for anthologies, compilations, or collective works

...copy more than three authors from a collective work

...copy from works intended to be "consumable", such as workbooks, exercises, standardized tests and test booklets and answer sheets, etc.

...copy in order to avoid purchase of books, reprints, music, or periodicals

...be directed by higher authority to make illegal copies

...repeat from term to term the same item

...charge a student beyond the actual cost of the photocopying

...have more than 9 instances of multiple copying in one class term

...copy music for any kind of performance (exception: A lost part may be copied in an emergency if it is replaced with a purchased part in due course.)

...extend the life of a worn-out ditto master by thermal or xerographic process

A TEACHER MAY:

...create a series of slides from multiple sources, such as magazines, books, encyclopedias, etc., as long as a teacher does not exceed 10% of the photographs in any one source and unless the source specifically prohibits any photographic reproduction.

...create a single overhead transparency from a single page of a consumable workbook

...create multiple overhead transparencies from a variety of sources, not exceeding 10% of the total content of any one source, unless this type of reproduction is specifically prohibited

...verify that an item is out-of-print in order to justify duplication

...receive satellite signals into the classroom in a planned teaching situation

...excerpt sections from a filmstrip to create slides as long as this does not exceed 10% of the entire work or excerpt the very creative essence of the work

...reproduce selective slides from a series as long as this does not exceed 10% of the entire production, excerpt the very creative essence of the work, or violate a specific prohibition

...project a film or videotape through a film chain on closed circuit television WITHIN THE BUILDING

...tape the audio and/or video portions of a TV news broadcast

...excerpt sections of a 16mm film to be included in a locally-produced videotape, not to be shown over cable TV, not to exceed 10% of the whole, and not excerpting the essence of the work

...off-air videotape television programs CLEARED FOR COPYRIGHT USAGE (See videotape section, page 11 8.)

...duplicate visual or audio materials of a non-dramatic literary work in order to provide materials for the blind or deaf. In addition, these and other copyrighted materials may be legally transmitted to blind or deaf persons via cable systems.

...display a copy of a copyrighted work on the opaque projector

...make a cassette tape copy of one selection from a record album, for use one time, as background

NOTE: A music teacher may make a single recording of a student performance for study and for the archives. A music teacher may make a single recording of annual exercises or tests using copyrighted material. In addition to recording music as part of the learning process, music educators may occasionally wish to record student performances and distribute copies of the recording within the community. Once phonorecords of a non-dramatic musical work have been distributed to the public in the U.S. under the authority of the copyright owner, any other person may obtain a compulsory license to record the work by complying with certain procedures and by the payment of the royalty provided in the law: 2 3/4 cents per selection or 1/2 cents per minute of playing time, whichever is greater. (This applies to music played at athletic events unless scores are original by the music educator.) It must be borne in mind that the first recording of a work and its distribution in recorded form requires the consent of the copyright owner.

A TEACHER MAY NOT: (without express written consent of the publisher)

...duplicate a copyrighted film, videotape, phonograph record, audio tape, etc., for any commercial or money-making purpose, such as PTO carnivals, class fund raisers or shows, for which an admission fee is charged

...make archival or back-up copies of copyrighted films, videotapes, phonograph records, filmstrips, or any other audiovisual medium except computer software

...copy radio excerpts onto audio cassette tape to use in the classroom (NOTE: Multiple copyright is very complex and includes various holders: producer, sheet music, record album, etc.)

...project a film or videotape through a film chain on closed circuit television (or cable) to another school in the school system

...tape the audio and/or video portion of a TV documentary for use in the classroom

...read a story from a textbook onto cassette tape for reading motivation. An exception is made for a blind student, however.

...use outside the school copies of videotapes, phonograph records, audio tapes, slide sets, etc., made from copyrighted originals

...make a copy of copyrighted originals owned by some other school, whether within or outside the school system

...duplicate a copyrighted work for the purpose of avoiding the purchase of an additional original copy of the work,

...retain a copy indefinitely. If the copy is intended for long-term use, the copyright owner should be contacted for permission.

...duplicate copyrighted materials on hand from a manufacturer or vendor for preview and evaluation

SUGGESTIONS:

To fully comply with the spirit of fair use, the copying should be at the immediate need and inspiration of an individual teacher or student. In addition, the inspiration and decision to use the work, and the moment of its use for maximum teaching/learning effectiveness should be so close in time that it would be unreasonable to expect a timely reply from the copyright owner to a request for permission to copy.

The user must keep in mind the amount copied in relation to the whole. An individual might be justified in making a single copy of each of five or ten pictures from a book containing 100 pictures, but would not be justified in copying every picture from a book containing only five or ten pictures.

The factors to be considered in determining whether the use made of a work in any particular case is a fair use include:

(1) the purpose and character of the use;

(2) the nature of the copyrighted work;

(3) the amount and substantially of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.

VIDEOTAPES

RECORDING TELEVISION BROADCASTS:

The guidelines were developed to apply only to off-air recording by non-profit educational institutions.

AN INDIVIDUAL TEACHER MAY:

...record a broadcast program off-air simultaneously with broadcast transmission (including simultaneous cable re-transmission) and retain it for a period NOT TO EXCEED THE FIRST FORTY-FIVE (45) CONSECUTIVE CALENDAR DAYS after the date of recording. Upon conclusiong of such retention period, all off-air recordings must be erased or destroyed immediately. "Broadcast programs" are television programs transmitted by television stations for reception by the general public without charge. The 1984 ratification of the Brussels Satellite Convention--a public law agreement obligating states to suppress the unauthorized distribution of satellite-derived signals without the consent of the

originating organization provided Congress with the opportunity to pass legislation affirming the right of private viewers --that is, HOME VIEWERS ONLY--to receive satellite signals without fear of violation of U.S. law, so long as no further distribution of the received signals takes place.

...use off-air recordings once in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary, in classrooms and similar places devoted to instruction within a single building, cluster, or campus, as well as in the homes of students receiving formalized home instruction, during the first ten (10) consecutive school days in the forty-five (45) calendar day retention period. "School days" are school session days--not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions--within the forty-five (45) calendar day retention period.

...make off-air recordings only at the request of and for use by individual teachers. Off-air recordings may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast.

...reproduce a limited number of copies from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording.

...after the first ten (10) consecutive school days, use off-air recordings to the end of the forty-five (45) calendar day retention period only for teacher evaluation purposes, i.e., to determine whether or not to include the broadcast program in the teaching curriculum. The recording may not be used in the recording institution for student exhibition or any other non-evaluative purpose without authorization.

...use only a portion of an off-air recording. Off-air programs need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.

NOTE: All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.

Each school is expected to establish appropriate control procedurees to maintain the integrity of these guidelines.

In January, 1984, the U.S. Supreme Court ruled, in the so-called "Sony Betamax" case, that the videotaping of television programs off the air for home use is not a violation of copyright law. Some educators contend that the Court said it is now all right for a

teacher to tape any program at home, carry it to school, and use it in the classroom. "Anyone who thinks this is making a grave mistake," says Kenton Pattie, who heads the Government Relations Department of the International Communications Industries Association. "There is absolutely nothing in the 82-page decision to support this contention." Carmel Clay Schools is accepting the Senate Committee Guidelines that a program may be taped at home or school for use, BUT PLAYED ONLY ONCE, plus one time for reinforcement. Permission to retain and use again, however, must be obtained from the copyright holder.

USING COPYRIGHTED VIDEOTAPES:

A TEACHER MAY:

...use in face-to-face instruction a videocassette PURCHASED BY THE SCHOOL even though it bears a warning label FOR HOME USE ONLY. The key is that the tape is INCORPORATED AS PART OF THE SYSTEMATIC TEACHING activities of the program in which it is being used.

...use for instructional purposes a RENTAL VIDEOCASSETTE bearing the FOR HOME USE ONLY label if the program is used as a part of planned, systematic, direct instructional activities.

A TEACHER MAY NOT:

...use either a purchased or rental video program labelled FOR HOME USE ONLY in other than planned, direct, instructional activities. The program may NOT be used for entertainment, fund-raisers, nor time-fillers. Any use, other than instructional, must be negotiated at the time of purchase or rental, usually in the form of a licensing agreement.

...make an archival or back-up copy of a copyrighted film or videotape

*****

LIBRARIES AND STUDENTS HAVE ADDITIONAL PRIVILEGES OTHERS DO NOT

A STUDENT MAY:

...tape a recording to use as background music for a slide production to be USED IN CLASS. (Since a class effort might be appropriate at a later time as a media fair project or as part of a public display, either inside or outside the classroom, the student is advised to develop an original composition or to use music from a production library or other sources for which the school has obtained a license and copyright permissions.)

...tape a song from a record owned by the student in order to provide music for a class photography project. The program may be shown at no charge to a parent group. However, if the record is owned by a parent, of if admission will be charged, taping the song would be an infringement.

...use an opaque projector to enlarge a visual from a book or magazine onto a poster. (An outline map of the U.S., the states, and rivers may not be copyrighted. These are considered public domain. The colors and details, however, are copyrighted. Any commercial map may be used to generate merely an outline map.)

A STUDENT MAY NOT:

...be directed to violate copyright in behalf of a teacher
...donate student photo copies (that incorporate copyrighted material) to become part of a school's collection

A LIBRARY MAY:

...copy unpublished works (print and phonorecords) for purpose of preservation and security

...copy print materials or phonorecords to replace damaged, deteriorating, lost, or stolen copies if replacements cannot be obtained at a fair price. A music teacher may preserve or replace library copies when not available for purchase.

...reproduce for a patron (student, staff, or member of the community) a single copy of one article or small part of a work to become the property of the patron for the purpose of study or research. (In an effort to promote material the library may also reproduce a single copy of an article or page of a book for all teachers.) THE COPY MUST DISPLAY THE COPYRIGHT WARNING.

...photocopy for the purpose of inter-library loan. However, the following inter-library loan restriction applies: MORE THAN SIX COPIES OF AN ARTICLE from a periodical (not a single issue, but over a year) shall be considered excessive and interpreted as an evasion of purchase of said periodical.

The library media specialist and the media staff are protected from copyright infringement violation by users of equipment under their jurisdiction if every duplicating machine is posted with a copyright warning to the effect that "the use of this machine to reproduce copyrighted material beyond the legal fair use is punishable by fine and/or imprisonment of the user."

****

These guidelines will, from time to time, be revised. However, as in many other areas of the profession, copyright law interpretation is continuously changing. Staff must comply with any court decisions or changes in the law that pertain to use of copyrighted materials in the educational setting.

******

REQUEST FOR PERMISSION TO COPY

Date_____

Office of Media Services
Carmel Clay Educational Services Center
P.O. Box 2099
Carmel, IN 46032

Person/School making request

_____

TO: Permissions Department

Dear Permissions Department:

We request permission to copy the following copyrighted materials:

Materials to be copied:

Number of copies to be made:

Copy medium:

Use of copies:

Anticipated date of first use:

Distribution of copies:

If we have not heard from you within 30 days, we shall assume that permission to duplicate has been granted.

Thank you for your cooperation. I am enclosing a copy of this request for your files, signed by me, and a self-addressed envelope for the return of this request.

_____
(Signature)

PRODUCER REPLY:

Title_____ Date_____

_____

Permission granted_____ _____
(Signature)

Permission denied_____

Conditions or details:_____

_____

_____

FEB 2 7 1986

TABBERT & CAPEHART

ATTORNEYS AT LAW

ONE INDIANA SQUARE
SUITE 1500
INDIANAPOLIS, INDIANA 46204
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JOHN DAVID HOOVER
SUSAN J. SMITH
MICHAEL B. MURPHY

CLAUDE M. WARREN, SR.
Of Counsel

February 26, 1986

Mr. Doyle McAllister
Associate Executive Director for Field Services
INDIANA STATE TEACHERS ASSOCIATION
150 West Market Street
Indianapolis, Indiana 46204

Re: Carmel Clay Copyright Policy

Dear Doyle:

At your request, I have reviewed the copyright policy for the Carmel Clay School Corporation. The policy as drafted is in full compliance with the current law on copyright. As a matter of fact, it appears to be one of the best efforts I have seen to actually place the copyright law into a workable policy for teachers.

As you know, under Public Law 217, a policy such as this would govern working conditions for the teachers and, thus, would be subject to discussion. If the local Association is dissatisfied with the policy, there may be portions which could be changed which would still comply with the copyright laws.

Please let me know if you wish us to do any additional work on this matter.

Sincerely,

TABBERT & CAPEHART

JANET C. KNAPP

JCK/bas

CAMPBELL KYLE PROFFITT
ATTORNEYS AT LAW

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HERALD A. SETTERS
of Counsel

198 South 9th Street
P.O. Box E
Noblesville, Indiana 46060
(317) 773-2090

650 East Carmel Drive
Suite 400
Carmel, Indiana 46032
(317) 846-6514

Please reply to Noblesville office

October 16, 1985

Ms. Karen Neimeyer
Carmel Clay Schools
10475 School Parkway
Carmel, IN 46032

Dear Karen:

I have reviewed both your two-paged, proposed copyright policy and your nine-paged, proposed ruling on use of copyright materials. I believe that your policy and ruling comply with both the spirit and the letter of the copyright statutes as contained in Title XVII of the United States Code, and I am comfortable recommending them to you and to the School Board. Should you have any further questions or concerns about your copyright policy, please feel free to contact me.

Very truly yours,

CAMPBELL KYLE PROFFITT

By Debbie
Deborah L. Farmer

DLF/eah

File: ECHC

REPRODUCTION AND USE OF COPYRIGHTED MATERIALS
(Non-Print/Print)

It is the intent of the Governing Board to delineate, enforce, and abide by the provisions of the current copyright laws as they affect the District and its employees.

Copyrighted materials, whether they be non-printed or printed, may not be duplicated without first receiving written permission from the copyright holder or complying with guidelines presented in administrative regulation ECHC-R.

The District does not sanction illegal use or duplication in any form. Employees who willfully violate the district's copyright position do so at their own risk and assume all liability-responsibilities.

Adopted: 3/6/78

LEGAL REFS.: United States Code, Title XVII
County Counsel No. 79-2638/CLD
County Counsel No. 78-0011/RBH

REPRODUCTION AND USE OF COPYRIGHTED MATERIALS
(Non-print/Print)

The local unit chief administrator is responsible for the enforcement of the provisions of this regulation. He/she will identify an individual to act as a liaison person for staff information (inservice), control of approval process (written and verbal), and the maintenance of written records relative to the duplication and distribution of copyrighted materials.

Off-Air Video Taping

District Instructional Media Services operates an off-air video tape recording service for District schools. This service is available 24 hours a day, seven days a week, and includes all channels (except pay channels such as HBO, Showtime, Disney, Etc.) that are carried on network or cable as well as instructional television with the San Diego County Office of Education (ITFS). The primary purpose of these procedures is to permit use of off-air video tape in face-to-face instruction and enable staff to preview instructionally related materials for possible acquisition through purchase, lease, rental, or free-loan agreements by the District. These guidelines enable teachers to replay television programs within a specified period of time.

To help prevent problems involving copyright violations on the part of the District or District employees, off-air taping of audio visual materials shall be accomplished under the following conditions and comply with the Governing Board Policy ECHC:

1. Any teacher desiring that an instructionally related program be taped by the District for classroom use shall complete a "Request For Off-Air /Video Taping" form (Exhibit ECHC-E). Such requests must be signed, which in effect is an agreement to abide by the provisions of this regulation. If a school elects to video tape at the local unit, a similar form must be used. An individual may use video programs taped at home as long as he/she complies with the policy and regulations adopted by the Governing Board regarding its use.

2. Unless otherwise authorized by the Associate Superintendent or his/her designee, all video tape recordings of network programs shall be erased no later than 45 days after the taping of the requested program. Instructional television programs broadcast over ITFS by the San Diego County Office of Education can be retained for the entire year (consult the County Instructional Television Guide for details).

3. Individuals who wish to retain programs beyond the 45 day period need to complete and return the preview evaluation portion of the "Request For Off-Air Video Taping" form to District Instructional Media Services for each program video taped. District Instructional Media Services will be responsible for requesting permission to use or retain copyrighted television programs beyond the 45 day retention period. Video tapes of commercial programs may only be retained with written approval of appropriate copyright holders.

4. Copyright law and cable franchise agreements exclude the District from recording or using pay channels such as "Showtime", "HBO", "Disney", etc., for classroom instruction. This provision covers any program broadcast by pay channels and intercepted through the use of cable channels or a satellite dish. Exceptions may be authorized by the Associate Superintendent or his/her designee, and some "pay programs" may be available for legal acquisition.

5. Use of off-air recordings made from a satellite dish must conform to the 45 day retention period established for broadcast or cable programming.

6. A taped program shall not be exchanged with other schools in the Grossmont Union High School District or other school Districts without approval of the Associate Superintendent or his/her designee.

7. The taped program shall not be used for public or commercial viewing.

8. The taped program shall be used for the specific curriculum application for which the request was intended and no other curriculum application is authorized.

9. Published lists of authorized video tape libraries shall be prepared and maintained for each local site.

10. Video tape programs which fall under the State's Sex Education Codes 51550, 51820 and 51240 may only be used following the established parent notification and material review process.

11. Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.

12. The principal of each school site is responsible for establishing practices which will enforce this policy at the school level. (See ECHC-E (2).

13. The legal or insurance protection of the District will not be extended to employees who violate copyright laws. In the event said employee is found guilty of violating existing copyright law by administrative law judge, judge or jury, or a combination thereof, the employee will be required to remunerate the District in the event of loss due to litigation.

Letters of Request for Information to Major Networks or Producers

A request for information as to the availability of a television presentation, which has been determined to be of educational value for classroom use through teacher preview, shall be made to the appropriate major television network (e.g., NBC, ABC, CBS). Information requested will include the following (see Exhibit ECHC-E(1):

1. Agency holding distribution rights to educational institutions
2. If and when the program will be available to the educational market
3. Type of film or video format to be used
4. Procedure for purchase, rental, or lease agreement

Requests to Networks or Producers for Permission to Tape or Retain Copyrighted Works

Although some producers allow nonprofit organizations to reproduce their materials, they must first review the status of their copyright to determine whether or not they have the power to grant permission. Regardless of the standard policy a producer may have regarding the granting of duplication rights, each request requires a careful checking of the exact materials to be duplicated. Therefore, requests to producers for permission to duplicate copyrighted audio-visual materials shall include the following information:

1. Correct title of the material
2. Exact description of the material to be used (i.e., test, visuals, soundtrack, etc.)
3. Type of reproduction
4. Number of copies to be made
5. Use to be made of reproduced materials: If the material is a video cassette, specify whether the intended use involves single receiver playback or multiple receivers. If the intended use involves transmission of the material, specific information should be supplied as the the method of transmission; whether radio or television, open or closed circuit. In such cases, many license agreements require that the number of students in the intended audience be stated.

Rental, Purchase, and Use of Video Tape

Copyright law and County Counsel opinion specify the following guidelines for the rental and purchase of video tapes. Due to the changing nature of the video industry these guidelines assure the District will remain in compliance with copyright and contract law provisions:

1. Use of feature length video tapes must be part of a systematic course of instruction and not for entertainment or recreation and their use must take place in a classroom or similar place devoted to instruction.

2. The purchase or rental of feature length or educational video tapes will be coordinated by the Associate Superintendent or his/her designee.

3. Use of video tapes must be made from legitimate copies.

4. Local schools may transmit video tapes over their closed circuit television systems for face-to-face instruction.

Computer Software Copyright Regulations

It is the intent of the Grossmont District to adhere to the provisions of the copyright laws in the area of microcomputer programs.

1. District employees will be expected to adhere to provisions of Public Law 96-517, Section 7 (b) which amends Section 117 of Title 17 of the United States Code to allow for the making of a back-up copy of computer programs. This states that "....it is not an infringement for the owner of a copy of a computer program to make or authorize the making of another copy or adaptation of that computer program provided:

   a. that such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner, or

   b. that such a new copy and adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the entire program should cease to be rightful."

2. When copyrighted software is used on a disk sharing system, efforts will be made to secure this software from copying.

3. Illegal copies of copyrighted programs may not be made or used on school equipment.

4. The legal or insurance protection of the District will not be extended to employees who violate copyright laws. In the event said employee is found guilty of violating existing copyright law by administrative law judge, judge or jury, or a combination thereof, the employee will be required to remunerate the District in the event of loss due to litigation.

5. The Superintendent or his/her designees of this school District may sign District duplication rights agreements or licenses for software for schools in the District.

6. No employee of the District shall encourage or allow any student to surreptitiously or illegally duplicate computer software or access any data base or electronic bulletin board.

7. No employee of the District shall surreptitiously or illegally access any date base or electronic bulletin board.

8. District Instructional Media Services is solely responsible for the duplication of all computer software licensed for District-wide use.

9. The legal, ethical, and practical problems caused by software piracy will be taught in all schools in the District.

10. The principal of each school site is responsible for establishing practices which will enforce this policy at the school level.

Printed Materials

No employee of the Grossmont Union High School District shall duplicate in any manner, any printed copyright material unless such duplication and its use falls within the boundaries of the "fair use" doctrine.

The Copyrights Act attempts to define "fair use" and establishes fixed limitations on duplication for schools and libraries. The law codifies four standards for determining fair use: (1) The purpose and character of the use including whether such use is of a commercial nature or for non-profit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole: and (4) the effect of the use upon the potential market for, or value of, the copyrighted work.

The principal shall determine where each copy machine is to be located and shall cause a copy of the "Printed Materials" section of this regulation to be posted in the immediate vicinity of each copy machine.

The following guidelines for duplication or printed copyright materials will be observed by all employees of the District:

1. Books and Periodicals:

   a. A teacher or designee may make a single copy of any of the following for use in teaching or preparing to teach:

      (1) A chapter from a book.
      (2) An article from a periodical or newspaper.
      (3) A short story, short essay or short poem, whether or not from a collective work.
      (4) A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.

   b. A teacher may make multiple copies (not to exceed more than one copy per pupil in a course) of any of the following:

      (1) Poems or excerpts of poems of less than 250 words.
      (2) Complete articles, stories, or essays of less than 2500 words.
      (3) Prose excerpts of 1000 words or 10% of the work, whichever is less.
      (4) One chart, graph, drawing, etc., per book or periodical issue.
      (5) Excerpts from childrens' books containing up to 10% of the works in text.

   c. A teacher may not make multiple copies of the following:

      (1) Works that have been copied for other courses in the school.
      (2) More than one work or two excerpts from one author in one term.
      (3) More than three works or excerpts from one anthology or periodical volume in one term.
      (4) Works more than nine times in one term.

   d. A teacher may not make copies of:

      (1) Works to take the place of anthologies.
      (2) "Consumable" works such as work books and test booklets.
      (3) The same work from term to term.

In each instance where multiple copies are allowed, each copy must include a notice of copyright.

2. Music and Recordings

As with guidelines for books and periodicals, duplicating copyrighted musical works is prohibited to replace collective works or "consumable" materials. In addition, music educations may not copy such works for purpose of performance or to substitute for the purchase of music.

A music educator may copy printed music in the following limited circumstances:

1. Emergency copying to replace purchased copies which are needed for a performance.

2. Copying of excerpts of works for non-performance purposes, if they do not comprise performable units (e.g., a movement), and are less than 10% of the works.

3. Copying of complete works if out of print or unavailable except in large works and used for teaching purposes.

Schools are permitted to retain single copies of the following recordings:

1. Performances by students for evaluation or rehearsal purposes.

2. Recordings made for the purpose of constructing aural exercises or examination.

3. Reproduction of Works by Libraries

The Copyrights Act imposes major restrictions on reproduction of works by school libraries. Systematic duplication of multiple copies is forbidden by law with exception of the following carefully defined exceptions:

1. Inter-library loan arrangements are permitted, provided that copying is not done to substitute for subscriptions to or purchase of a work.

2. Libraries may make up to six copies of the following:

   a. A periodical article published within the last five years.
   b. Excerpts from longer works.

3. Libraries must keep detailed records of all inter-library loan requests.

4. Libraries may make single copies of articles or excerpts of records or longer works for students, provided the articles become the property of the student.

5. Libraries may make copies of unpublished works for preservation, published works to replace damaged copies, and out-of-print works which cannot be obtained at a fair price.

To avoid liability for copyright infringement on the part of the library or an employee as a result of unsupervised duplicating, libraries must display notices to the effect that making a copy may be subject to the copyright law.

4. Educational Performances and Displays

The Copyrights Act defines fair use of copyrighted material in classroom teaching and educational broadcasting. Teachers may use such material in "face-to-face" teaching activities. Such protection does not extend, however, to knowing use of unauthorized reproductions of works.

Nonprofit instructional broadcasts are given limited protection from infringement claims. An exemption is granted to works used in regular instructional programs for both closed circuit and open circuit in-school reception. In such situations, broadcasters need not obtain permission to perform non-dramatic literary or musical works, but must receive permission to act out dramas or musicals or show motion pictures and slide shows.

Issued: 3/6/78
Revised: 8/7/85

Agency Guidelines for Off-Air Video Taping Are to be Printed on the Back of this Form

Request Number_____
(office use only)

REQUEST FOR OFF-AIR VIDEO TAPING

I, the undersigned, having requested the (NAME OF AGENCY) to video tape the following program(s) within the parameters of the policy set forth by the Governing Board, (DATE), am aware of said policy (see reverse side) and agree to accept responsibility for the use and erasure of this material to prevent any infringement of copyright law in lieu of expressed written approval of the copyright proprietor.

Title of Program to Be Copied_____

Date of Program_____ Date Program Is Needed_____

Time of Program_____ Station or Channel_____

Length of Program_____

Special Instructions_____

_____

Requestor's Name_____ Location_____
(please print)

Signature_____ Department_____

PREVIEW AND EVALUATION

___Yes ___No Do you want the video tape of this program retained until information regarding the sale, lease, free loan or rental of this material is obtained?

INSTRUCTIONAL QUALITY (circle the appropriate number on the rating scale below)

CRITERIA	SUGGESTED GUIDELINES FOR RATING SCALE	RATING SCALE
Instructional Design	Well organized, content load appropriate, maturity level consistent with the content.	5 4 3 2 1 0
Content	Accurate, authentic, current, thorough, relevant.	5 4 3 2 1 0
Curriculum Match	Supports what is commonly taught in this subject at this grade level.	5 4 3 2 1 0
Interest	Supports or enhances communication of content.	5 4 3 2 1 0

5 = exemplary 4 = desirable (very good) 3 = desirable (good) 2 = fair 1 = poor 0 = unacceptable

Overall (Average) Rating of Quality

____Yes (High Priority) ____Yes (Low Priority) ____No Do you recommend acquisition of this program?

LEGAL COMPLIANCE

____Yes ____No meets state legal compliance guidelines: women's roles, ethnic balance, aged, handicapped, etc.

SENSITIVE CONTENT

____Yes ____No Is nudity, excessive violence, glamorization of drugs/dangerous substances, profanity and/or a sexual nature present in this program? IF YES please verify by circling the topics present.

____Yes ____No Does this program come under education codes for sex education, sexually transmitted diseases, etc? IF YES please abide by state education code provisions and prohibitions.

ADDITIONAL INFORMATION

Subject Area(s)_____ Grade Level_____ Ability Level_____

____Yes ____No Previewed with students?

____Yes ____No ____Uncertain Do presently owned materials adequately cover the subject areas?

Overall evaluation (summary, use, etc.) and/or reasons for requesting retention of this tape:

_____

_____

_____

_____

_____

VIDEO TAPE STATUS - OFFICE USE ONLY

DATE_____

_____ AVAILABLE: Format: _____16mm _____3/4" _____1/2" VHS

____Other (Specify)_____ Price: _____

_____ May be retained indefinitely
_____ May be kept on an indefinite basis pending updated information on the program's future availability
_____ May be kept permanently on a licensed basis
_____ Must be erased immediately

DISTRICT GUIDELINES FOR OFF-AIR VIDEO TAPING

District Instructional Media Services operates an off-air video tape recording service for district schools. This service is available 24 hours a day, seven days a week, and includes all channels (except pay channels such as HBO, Showtime, Disney, etc.) that are carried on network or cable as well as instructional television with the San Diego County Office of Education (ITFS). The primary purpose of these procedures is to permit use of off-air video tape in face-to-face instruction and enable staff to preview instructionally related materials for possible acquisition through purchase, lease, rental, or free-loan agreements by the District. These guidelines enable teachers to replay television programs within a specified period of time.

COPYRIGHT

To help prevent problems involving copyright violations on the part of the District or district employees, off-air taping of audio visual materials shall be accomplished under the following conditions and comply with the Governing Board Copyright Policy ECHC:

1. Any teacher desiring that an instructionally related program be taped by the District for classroom use shall complete a "Request For Off-Air Video Taping" form (Exhibit ECHC-E). Such requests must be signed, which in effect is an agreement to abide by the provisions of this regulation. If a school elects to video tape at the local unit, a similar form must be used. An individual may use video programs taped at home as long as he/she complies with the policy and regulations adopted by the Governing Board regarding its use.

2. Unless otherwise authorized by the Associate Superintendent or his/her designee, all video tape recordings of network programs shall be erased no later than 45 days after the taping of the requested program. Instructional television programs broadcast over ITFS by the San Diego County Office of Education can be retained for the entire year (consult the County Instructional Television Guide for details).

3. Individuals who wish to retain programs beyond the 45 day period need to complete and return the preview evaluation portion of the "Request For Off-Air Video Taping" form to District Instructional Media Services for each program video taped. District Instructional Media Services will be responsible for requesting permission to use or retain copyrighted television programs beyond the 45 day retention period. Video tapes of commercial programs may only be retained with written approval of appropriate copyright holders.

4. Copyright law and cable franchise agreements exclude the District from recording or using pay channels such as "Showtime", "HBO", "Disney", etc., for classroom instruction. This provision covers any program broadcast by pay channels and intercepted through the use of cable channels or a satellite dish. Exceptions may be authorized by the Associate Superintendent or his/her designee, and some "pay programs" may be available for legal acquisition.

5. Use of off-air recordings made from a satellite dish must conform to the 45 day retention period established for broadcast or cable programming.

6. Taped programs shall not be exchanged with other schools in the Grossmont Union High School District or other school districts without approval of the Associate Superintendent or his/her designee.

7. The taped program shall not be used for public or commercial viewing.

8. The taped program shall be used for the specific curriculum application for which the request was intended and no other curriculum application is authorized.

9. Published lists of authorized video tape libraries shall be prepared and maintained for each local site.

10. Video tape programs which fall under the State's Sex Education Codes 51550, 51820, and 51240 may only be used following the established parent notification and material review process.

11. Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.

12. The principal of each school site is responsible for establishing practices which will enforce this policy at the school level.

13. The legal or insurance protection of the District will not be extended to employees who violate copyright laws. In the event said employee is found guilty of violating existing copyright law by administrative law judge, judge or jury, or a combination thereof, the employee will be required to remunerate the district in the event of loss due to litigation.

SAMPLE LETTER: REQUEST FOR PERMISSION TO COPY

Author, Publisher, or Distributor
Permission Department

Date

I am requesting permission to copy and use:

Title_____ Author/Editor_____

Year Published_____ Number of Copies_____ Will Copies be sold? (Circle) Yes No

Description of materials to be copied (Photocopy enclosed):_____

Intended use of materials:_____

Will copies be sold? (Circle) Yes No

Type of Reproduction_____

A self-addressed, stamped envelope is enclosed for your convenience in replying to this request. Should you be unable to authorize this request please forward this letter to the proprer person/agency.

Sincerely,

Permission Granted_____ Date_____
Signature

Conditions (if any)_____

SAMPLE PRODUCER INQUIRY LETTER: REQUEST FOR INFORMATION OF AGENCY HOLDING RIGHTS TO A TV BROADCAST AND PERMISSION TO RETAIN PROGRAM IF IT IS NOT FOR SALE, RENTAL OR LEASE.

Network Address (ABC, NBC, CBS - not affiliate)
Permission Department

Date

I am requesting information on the availability and retention of the following program:

Title:_____ Air Date:_____

Can a copy of this program be retained for classroom instructional use? (Circle) Yes No

Is this program available for sale? Yes No
If Yes - Specify agency distributing this program:_____
Specify Format:_____ Cost (if known)_____

Enclosed is a self-addressed, stamped envelope for your convenience in replying to this request. Should you be unable to authorize this request, or provide the above information, please forward this letter to the proper person/agency.

Sincerely,

Permission to retain off-air copy on a free basis:_____ Date _____
Signature

Conditions (if any)_____

GROSSMONT UNION HIGH SCHOOL DISTRICT
OFF-AIR VIDEO TAPE NOTICE

NAME_____ DATE_____

As a service to you, and in accordance with the district procedures (ECHC/ECHC-r--3/6/78 & 6/12/85), regarding off-air taping of copyrighted works, we are reminding you that the following video tape programs recorded for you on_____ (date) must be erased:

_____

_____

Unless otherwise authorized by District Instructional Resources, failure to erase these tapes within the 45 days allotted time period will place you in violation of federal off-air video tape guidelines and District policy, as well as jeopardize the school and District's ability to continue off-air video taping. This time period may be extended if permission is received from the copyright holder within the 45 day period.

Please return your tape(s) to your library/media specialist to be erased, or notification to him/her from your department chairman that the tape has been erased within the department.

Principal of School_____

GUHSD-4/87

GROSSMONT UNION HIGH SCHOOL DISTRICT
Office of the Associate Superintendent
Instructional Resources

TO:

RE: Educational Code, Section 51550, 51820, and 51240 (Sex Education, Board Policy IDBA, and the Use of Off-Air Video Tape

---

The television program _____ was videotaped off-air by District Instructional Resources for your use. This is a reminder that the televised program falls under Education Code 51550, 51820, and 51240 as it affects instruction in Sex Education and as stated in the adopted Board Policy, October 3, 1977 (IDBA).

Prior to any viewing by students, the following procedures must be put in place:

1) Written notification to all parents that you plan to use the videotaped program in class and that you are providing an opportunity for their review of the material prior to its intended use.
2) If <u>any</u> parent objects to his/her student viewing the material, it may <u>not</u> be used in that class <u>at all</u>. For example, if a parent of a student in your Period 3 class says <u>no</u> to the viewing, you absolutely <u>may not</u> use the material in Period 3. Further, you cannot send that student to the library, study hall, etc., during Period 3 while you show the material to the remainder of the class. This is clearly stated in Policy IDBA.
3) Further caution - - any material defined under Policy IDBA that is acquired after the official parent review process, which occurs at the beginning of each semester, may <u>not</u> be used in class unless Steps 1 and 2 above have been followed.

cc: Principals

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UTILIZATION OF INSTRUCTIONAL MATERIALS

The Governing Board believes in the appropriate instructional use of print and non-print materials. Although the Board delegates the authority for the selection and use of these materials, it is the policy of the District that use of any instructional resources by the staff will conform to the regulations set forth in this policy. It is also the policy of the Grossmont Union High School District that every reasonable effort will be made to protect students from inappropriate use of instructional materials not currently owned by the District. Violation of the policy will be deemed to be outside the employee's scope of employment. If the district is found liable for any damages as a result of litigation arising out of this policy, the employee will be required to remunerate the District for all legal fees and other associated court costs in addition to any monetary loss for general or punitive damage due to litigation.

Note: "Instructional Materials" as used in this policy statement refers to books, magazines, newspapers, pamphlets, films, audio and video tapes, records, pictures, slides, realia, transparencies, microforms, and all other instructional resources used in the District.

Adopted: 9-4-86

Instructional Materials Not Currently Owned by the District:

1. Will be used in compliance with the provisions listed in the General Regulations section of this policy. Every reasonable effort shall be made to protect the students from use of inappropriate instructional material not currently owned by the district.

2. Will conform to the United States copyright laws and guidelines and District policies regarding use of copyrighted materials.

Violation of this policy and regulations may result in disciplinary action.

Adopted: 9-4-86

The following is the Board Approved Guidelines on Copyright for Los Angeles County Office of Education, 9300 East Imperial Highway, Downey, CA 90242-2890. Don S. Lake, Video/Film Library, Instructional Communications Technologies Division. Telephone: 213/922-6107.

3450* Copyright

3451* Office Copyrights

Any material or work which is intended for use, distribution, or publication and which is developed by an employee within the scope or as a result of his or her employment shall be claimed as the sole property of, and may be copyrighted, licensed, trade secreted, or patented by the County Board of Education. (EC 1044, 1045, 32360)

(Adopted 4-25-77)
(Revised 4-8-80)
(Revised and renumbered 3-22-88)

3452* Use of Copyright-Protected Material

It is the intent of the Board that the County Office of Education adhere to the provisions of the U.S. Copyright Law. All County Office of Education staff shall comply with the provisions of the law. Any staff member who willingly violates the Copyright Law shall be held personally liable for infringement and may be subject to disciplinary action. Copyrighted material shall be treated as the property of the copyright holder, with all rights and limitations specified in the law.

4/88

Section 107 of the law allows educators "fair use" of copyrighted material, meaning that limited numbers of copies of portions of copyrighted works for classroom, scholarship, or research purposes may be made without infringing on copyright. County Office of Education staff shall adhere to the fair use guidelines established in the regulations for printed materials and off-air video recordings.

Fair use guidelines have not yet been developed for software; therefore, staff shall adhere to restrictions in regulation 3452.3R on duplication of software.

The classroom uses allowed under the fair use doctrine for print and video shall be deemed to apply to use by County Office staff in instructional or training settings for the public education clients served by the office. (Title 17, U.S. Code)

(Adopted 3-22-88)

3453* Use of Proprietary Software Products

It is the intent of the Board that the County Office of Education adhere to the provisions of copyright law (Title 17, U.S. Code) and publishers' license agreements, including trade secret provisions, in the area of proprietary software products. (Proprietary products are those made or marketed by persons having exclusive manufacturing and sales rights, who may or may not be the copyright holders.) Therefore, persons may use or cause to be used on office computing equipment only software that is included in one of the following categories.

a. Public domain (i.e., uncopyrighted) software
b. Software covered by a licensing agreement with the software author, authors, vendor, or developer, whichever is applicable (a licensing agreement is a legal contract authorizing use of the software)
c. Software purchased by the office, with a record of the purchase on file
d. Software purchased by the user, with a record of purchase available for office verification
e. Software donated to the office and officially accepted by the Board
f. Software being reviewed or demonstrated by the users in order to reach a decision about possible future purchase, license, or acceptance of a donation

g. Software written or developed by the office or by an employee for use by the office or to assist in training school district personnel
h. Software developed by a nonemployee under contract to the office for use by the office or to assist in training school district personnel

In addition, none of the software in the categories listed above may be used or obtained in violation of copyright law or licensing agreements or other limitations set by the office.

Licensing agreements or other forms of documentation covering software shall be kept on file at the location where the computer program is used. (See 3421R and 3421P for information on submitting a Request for Contract, the form used to obtain approval for a licensing agreement.)

(Adopted 3-22-88)

3460* Dissemination of Proprietary Materials

It is the intent of the Board that proprietary products of activities supported by the Board be utilized in a manner which will best serve the public interest. (County Office of Education proprietary products or materials are those to which the office has exclusive rights, including trade secret protection.)

This can be accomplished in some situations by producing the materials without a copyright. However, in most situations copyright protection is desirable as an incentive to promote the effective dissemination of such materials.

In accordance with copyright guidelines of the California State Department of Education, materials produced under state-administered federal grants shall be copyrighted and a publisher selected by the office, unless more effective distribution of the materials can be accomplished in another manner. The state superintendent of public instruction must approve the method of dissemination of materials produced under state-administered grants.

Materials produced under direct grants or materials developed under the auspices of the Board may be disseminated by a publisher selected by the office or in another manner deemed appropriate by the office.

(Adopted 2-22-88)

3430R Approvals Required

Prior to the signing of a contract, required approvals (see Contracts Approval Authority below) shall be secured. The Chief Deputy Superintendent shall determine if the contract requires approval of the Board.

All contract requests requiring Board approval pursuant to provisions of the Education Code or other applicable laws shall be approved by the Superintendent who shall secure the approval of the Board.

All contracts involving an expenditure in excess of $100,000 shall require the written approval of the Superintendent before they are signed on behalf of the office.

Contracts Approval Authority

The Contractual Relations Officer shall be contacted for information on authority for contracts approval.

3450R** Copyright

3451R** Office Copyrights

Copyrightable materials developed by office staff include, but are not limited to, books, directories, periodicals, musical compositions, works of art, photographs, prints and pictorial illustrations, motion pictures, slides, video and audio tapes, computer software, and films.

A notice of copyright shall be affixed to all materials to be copyrighted by the office, commencing with first publication. The act of publishing a work with the copyright notice affixed secures the copyright protection.

Publication is defined as "the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending."

Upon preparation and in anticipation of publication or use, and with the division director's approval, copyrightable materials developed by office staff within the scope or as a result of employment by the office shall carry a copyright notice, which will provide the office with preliminary protection until official approval to copyright has been obtained.

When the finished version of copyrightable materials has been prepared, formal approval to copyright shall be obtained from the superintendent.

The superintendent shall have final authority for approving materials to be copyrighted by the office. The superintendent may appoint an ad hoc committee to review and make recommendations on proposed copyrighting of specific material by the office.

All materials copyrighted by the office shall be original, unless the required clearances and permissions have been obtained in writing from the copyright holders.

Publications prepared by the Los Angeles County Office of Education incorporating works which are not original may still be copyrighted by the office to protect the original portions therein.

If materials are produced under a state-administered grant, copyrights shall be secured according to the copyright guidelines published by the State Department of Education. Authors shall consult the appropriate funding agency office regarding procedures to be followed when considering copyright of materials produced under the auspices of direct grants or contracts. (Also see 3460, 3460R, and 3460P on dissemination of proprietary materials.)

Original material may be registered by the copyright office at the discretion of the Los Angeles County Office of Education.

(Approved 10-12-77)
(Revised 4-8-80)
(Revised 3-22-88)

3451.1R Trade Secrets

Computer programs developed by or for the office may be considered trade secrets. Disclosure must be limited in order to qualify for trade secret protection by the use of:

- labels
- restricted access
- secured premises and storage

It is the responsibility of the administrator in charge of development of the program, whether done by staff or contractor, to establish and maintain procedures to preserve the secret nature of the work during development and dissemination.

Approvals for trade secret or other forms of protection will be acquired in the same manner prescribed for copyright protection in 3451R and 3451P.

(Approved 3-22-88)

3452R Use of Copyright-Protected Material

Section 107 of the Copyright Law states ". . .the fair use of a copyrighted work. . .for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include--

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work."

Staff members shall apply these fair use guidelines when considering the use of copyrighted print or video material for instructional, scholarship, or research purposes.

The guidelines in the subparts of this regulation explain what the office shall consider fair use for printed materials and off-air video recordings. The guidelines were delineated in congressional committee reports in 1976 and 1981.

On occasion, a special notice is provided with some materials specifically prohibiting reproduction of any kind. However, the fair use guidelines do not apply to these materials. Permission to use any part of such works must be secured in writing from the copyright holder.

Whenever copyrighted works are used in part under fair use guidelines or by permission, or in whole by permission, a notice of who owns the copyright must be included on the copy of the work or in the office-produced work in which the copyrighted material appears.

(Approved 3-22-88)

3452.1R Duplication of Printed Material

To help ensure compliance with the law, the following notice shall be posted on all duplicating machines in the office:

> The Copyright Law of the United States (Title 17, U.S. Code) governs the making of photocopies or other reproductions of copyrighted materials. The person using this equipment is liable for any infringement.

Permitted as Fair Use

1. Single copies at the request of an employee--
   a. a chapter of a book
   b. a newspaper or magazine article
   c. a short story, short essay, or short poem, whether or not from a collective work
   d. a chart, graph, diagram, drawing, cartoon, or picture from a book, magazine, or newspaper

2. Multiple copies at the request of a teacher, consultant, or other trainer for classroom or instructional workshop use (not to exceed one copy per student) of--

   a. a complete poem if less than 250 words
   b. from a longer poem, an excerpt of not more than 250 words
   c. a complete article, story, or essay of less than 500 words
   d. an excerpt from a longer printed work not to exceed 10 percent of the whole or 1,000 words, whichever is less

e. one chart, graph, diagram, cartoon, or picture per book or magazine issue

Prohibited

1. Copying more than one work or two excerpts from a single author during one class term or per workshop or series of training sessions

2. Copying more than three works from a collective work or periodical volume during one class term or per workshop or series of training sessions

3. More than nine instances of multiple copying for distribution to students during one class term or in one workshop or series of training sessions

4. Copying used to create or replace or substitute for anthologies or collective works

5. Copying of "consumable" works such as workbooks, standardized tests, answer sheets

Note: These prohibitions do not apply to current news magazines and newspapers.

(Approved 3-22-88)

3452.2R Off-Air Video Recording

To help ensure compliance with the law, the following notice shall be posted on all video tape recorders in use in the office:

> Warning: Federal law provides severe civil and criminal penalties for the unauthorized reproduction, distribution or exhibition of copyrighted motion pictures, video tapes or video discs.

The following guidelines were developed to apply only to off-air recording by nonprofit educational institutions.

Permitted as Fair Use

1. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable retransmission) and retained by a nonprofit educational institution for a period not to exceed the first 45 consecutive calendar days after date of recording. Upon conclusion of such retention period, all off-air recordings must be erased or destroyed immediately. "Broadcast programs" are television programs transmitted by television stations for reception by the general public without charge.

2. Off-air recording may be used once by individual teachers, consultants, or other trainers in the course of relevant instructional or training activities, and repeated once only when instructional reinforcement is necessary in classrooms and similar settings, during the first 10 consecutive work days in the 45-calendar-day retention period.

3. Off-air recordings may be made only at the request of and used by individual teachers, consultants, or other trainers, and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher, consultant, or other trainer, regardless of the number of times the program may be broadcast.

4. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers and other trainers under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording.

5. After the first 10 consecutive work days, off-air recordings may be used up to the end of the 45-calendar-day retention period only for evaluation purposes (i.e., to determine whether or not to include the broadcast program as part of ongoing training activities--in which cased permission from the producer would be required).

6. Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content.

Prohibited

1. Off-air recording in anticipation of teacher or other staff member requests

2. Using the recording for instruction after the 10-day use period

3. Holding the recording for weeks or indefinitely because--

   . units, workshops, or training sessions requiring the program concepts were not held within the 10-day use period

   . an interruption or technical problems delayed its use

   . another teacher, consultant, or trainer wishes to use it

   . of any other assumed "legitimate" educational reason

4. Physically or electronically merging or combining off-air recordings to constitute instructional anthologies or compilations

5. Using off-air recordings or programs rented or purchased from a video store for entertainment during the work day or evenings (This constitutes a public showing for which special fees must be paid.)

6. Using owned equipment for making or playing back copies that are not legally acquired

(Approved 3-22-88)

3452.3R Duplication of Software

No person shall copy or cause to be copied on office computing equipment any copyrighted or proprietary programs, except for archival purposes as explained below. Proprietary programs are those to which someone, who may or may not be the copyright holder, has exclusive rights, including trade secret protection.

To help ensure compliance with the prohibitions on duplication of software, the following notice shall be affixed to each computer in use in the office:

> Illegal copies of copyrighted programs may not be made or used on computer systems belonging to the Los Angeles County Office of Education. The legal and insurance protection rights of the office will not be extended to persons who violate copyright laws or license agreements.

One archival, or backup, copy of copyrighted software purchased by or donated to the office may be made, unless an applicable licensing agreement prohibits copying for any purpose. An adaptation of a copyrighted computer program may be made only if it is for archival purposes and is essential to using the program on a particular computer, and does not violate terms of a license agreement. Archival copies shall be destroyed should use of the computer programs cease to be rightful.

No person shall make copies of copyrighted software documentation without written permission from the copyright owner (permission to make one archival copy may be given in the documentation itself) or as permitted under the doctrine of "fair use."

(Approved 3-22-88)

3453R Use of Purchased Software Products

The guidelines set forth below shall be followed in the handling of all software purchased for use by the office.

1. On receipt of software and prior to use, check the package and any accompanying documentation or materials. Look carefully for:

   . warnings
   . references to copying restrictions
   . license agreements
   . special seals or wrappings
   . trade secret references

   The package may be marked to indicate that breaking the seal or wrapper constitutes acceptance of the terms of a license agreement.

2. If a license agreement or other contractual agreement is part of the software package, carefully read the conditions of the agreement and look closely for any limitations on copying, use on specific computers, or other aspects of use. If the wording is difficult to interpret, immediately contact the contractual relations officer in the Division of Internal Business Management for assistance.

3. If the terms are not acceptable:

   . the software and documentation may be returned for a refund;
   . the company may be contacted to see if a more acceptable agreement can be negotiated; or
   . the contractual relations officer may be consulted to determine other options.

When a decision is made to negotiate a new agreement, forward the changed agreement and all documentation of the company's approval of the changes to the contractual relations officer for processing.

4. If the terms of the agreement are acceptable, proceed with installation and use of the software according to the agreement. Complete the agreement form and forward it to the contractual relations officer for signature. All contracts, license agreements, or other legal agreements with outside organizations must be reviewed and signed by the contractual relations officer.

(Approved 3-22-88)

3460R** Dissemination of Proprietary Materials

If it is determined by the office that proprietary materials should be disseminated through a private publisher, the office shall secure permission of the Board to license the material. If the materials were produced under a state-administered federal grant, the office shall secure the permission of the state superintendent of public instruction to copyright and disseminate the material.

If it is determined that the office will publish and disseminate the materials, the cost of the material shall be established in accordance with policy 3525.

The office shall prepare a report to the Board which indicates the reasons for publication of the materials, including expected benefits to the educational community and the public at large. The report shall contain the expected financial arrangements between the publisher and the office. If the Board approves license of the materials, a publisher shall be selected using a competitive process.

(Approved 3-22-88)

3500R EDUCATION CENTER AND ANNEX

3510R Building Services

3512R Maintenance

Requests for special maintenance services such as facility modifications, changes in telephone or utility service, construction, or relocation of space or personnel, shall be submitted on the Building Facilities Request (#501-001).

3513R Security

3513.1R Admission to Locked Rooms

No person, employee or non-employee, shall be given access to a locked area without the written approval of the Office Services Manager or his delegated representative.

3513.2R Building Alarm System

All exit doors, and certain areas of the building shall be protected by an alarm system. The security guards shall be responsible for activating or deactivating the alarm system.

3513.3R Building Admission During Non-Public Hours

All persons admitted to the Education Center and Annex during non-public hours shall sign in upon entering the facility, and sign out upon leaving the facility. The security guard on duty shall be responsible for the accuracy of the data entered in the security log.

Non-employees, including children, shall be admitted to the Education Center and Annex during non-public hours only with the written approval of the Office Services Manager or his delegated representative.

Employees shall be admitted to the Education Center and Annex during non-public hours upon the presentation of a valid identification card and their

3450P Copyright

3451P Office Copyrights

The procedure for securing copyright approval for materials developed by office staff shall be as follows:

1. Prior to completing any material to be considered for copyright by the office, the author shall schedule a meeting with the appropriate division director to discuss a draft of the work.

2. The division director shall prepare a request for approval to copyright, with a draft of the work and necessary clearances from copyright holders attached, and shall submit the request to the appropriate assistant superintendent.

3. The assistant superintendent shall forward approved requests to the superintendent for final approval.

4. Approved requests to copyright shall be maintained in the Contracts Section of Internal Business Management. The contractual relations officer shall forward a copy of the approved request to the Records Management Unit. Permissions from copyright holders shall remain on file in the originating division for as long as the publication is in print, plus three years.

5. Two copies of the work, marked "Permanent File Copies," shall be forwarded to the Records Management Unit. At the end of the copyright period, the work shall be returned to the author. Two copies of the work also shall be sent to the Professional Reference Center.

6. The notice of copyright shall appear as follows:

   Copyright 19 (year of first publication)
   by the Los Angeles County Office of Education

   (The symbol c may be used in place of the word copyright.)

   This notice shall appear in a manner giving reasonable notice of the copyright. For a book or other publication printed in book form, the

copyright notice shall appear on the title page or the page immediately following; for a musical composition, the notice may appear either upon the title page or the first page of the music; in the case of motion pictures, films, or other audiovisual materials, near the title or credits. A special form of the notice is permissible for works such as maps, works of art, models or designs for works of art, photographs, etc. Information regarding the appropriate notice on these items can be obtained from the U.S. Register of Copyrights.

(Approved 10-22-77)
(Revised 4-8-80)
(Revised and renumbered 3-22-88)

3460P Dissemination of Proprietary Materials

The procedures for Board-approved license and publication of materials are as follows:

The developer of the materials shall meet with the contractual relations officer to determine the terms and conditions of a Request for Proposals to be issued by the Contracts Section to prospective publishers. The Request for Proposals shall contain--

1. A description of the proprietary materials to be published

2. A discussion of the anticipated audience for the materials

3. The terms and conditions under which the publisher is authorized to produce and disseminate the material, including whether the license is exclusive or nonexclusive, the geographic area in which dissemination is authorized, quality control provisions, revision restrictions and authorizations, confidentiality provisions, guarantees of originality, the amount of royalty payments to be made and the frequency of same, hold harmless provisions, and term of the licensure arrangement.

The contractual relations officer shall develop a Request for Proposals to be submitted to responsible publishers. After proposals are received, an evaluation committee shall be selected by the office to develop a recommendation for award of a license agreement by the Board.

Upon approval of the licensure arrangement by the Board, the contractual relations officer shall prepare the agreement with the publisher. If the materials were developed under a state-administered federal grant, the contractual relations officer shall secure the approval of the state superintendent of public instruction to publish the materials.

If it is determined that the office will disseminate the materials, the cost of the material will be established according to policy 3525. In the case of software, the Critical Review Panel shall establish the unit cost.

(Approved 3-22-88)